

1 **DIVISION B—IMMIGRATION RE-**  
2 **FORM, ACCOUNTABILITY,**  
3 **AND SECURITY ENHANCE-**  
4 **MENT ACT OF 2002**

5 **SEC. 1001. SHORT TITLE.**

6 This division may be cited as the “Immigration Re-  
7 form, Accountability, and Security Enhancement Act of  
8 2002”.

9 **SEC. 1002. DEFINITIONS.**

10 In this division:

11 (1) **ENFORCEMENT BUREAU.**—The term “En-  
12 forcement Bureau” means the Bureau of Enforce-  
13 ment and Border Affairs established in section 114  
14 of the Immigration and Nationality Act, as added by  
15 section 1105 of this Act.

16 (2) **FUNCTION.**—The term “function” includes  
17 any duty, obligation, power, authority, responsibility,  
18 right, privilege, activity, or program.

19 (3) **IMMIGRATION ENFORCEMENT FUNC-**  
20 **TIONS.**—The term “immigration enforcement func-  
21 tions” has the meaning given the term in section  
22 114(b)(2) of the Immigration and Nationality Act,  
23 as added by section 1105 of this Act.

24 (4) **IMMIGRATION LAWS OF THE UNITED**  
25 **STATES.**—The term “immigration laws of the United

1 States” has the meaning given the term in section  
2 111(e) of the Immigration and Nationality Act, as  
3 added by section 1102 of this Act.

4 (5) IMMIGRATION POLICY, ADMINISTRATION,  
5 AND INSPECTION FUNCTIONS.—The term “immigra-  
6 tion policy, administration, and inspection func-  
7 tions” has the meaning given the term in section  
8 112(b)(3) of the Immigration and Nationality Act,  
9 as added by section 1103 of this Act.

10 (6) IMMIGRATION SERVICE FUNCTIONS.—The  
11 term “immigration service functions” has the mean-  
12 ing given the term in section 113(b)(2) of the Immi-  
13 gration and Nationality Act, as added by section  
14 1104 of this Act.

15 (7) OFFICE.—The term “office” includes any  
16 office, administration, agency, bureau, institute,  
17 council, unit, organizational entity, or component  
18 thereof.

19 (8) SECRETARY.—The term “Secretary” means  
20 the Secretary of Homeland Security.

21 (9) SERVICE BUREAU.—The term “Service Bu-  
22 reau” means the Bureau of Immigration Services es-  
23 tablished in section 113 of the Immigration and Na-  
24 tionality Act, as added by section 1104 of this Act.

1           (10) UNDER SECRETARY.—The term “Under  
2       Secretary” means the Under Secretary of Homeland  
3       Security for Immigration Affairs appointed under  
4       section 112 of the Immigration and Nationality Act,  
5       as added by section 1103 of this Act.

6       **TITLE XI—DIRECTORATE OF**  
7       **IMMIGRATION AFFAIRS**  
8       **Subtitle A—Organization**

9       **SEC. 1101. ABOLITION OF INS.**

10       (a) IN GENERAL.—The Immigration and Naturaliza-  
11       tion Service is abolished.

12       (b) REPEAL.—Section 4 of the Act of February 14,  
13       1903, as amended (32 Stat. 826; relating to the establish-  
14       ment of the Immigration and Naturalization Service), is  
15       repealed.

16       **SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMI-**  
17       **GRATION AFFAIRS.**

18       (a) ESTABLISHMENT.—Title I of the Immigration  
19       and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

20           (1) by inserting “**CHAPTER 1—DEFINITIONS**  
21       **AND GENERAL AUTHORITIES**” after “**TITLE**  
22       **I—GENERAL**”; and

23           (2) by adding at the end the following:

1           **“CHAPTER 2—DIRECTORATE OF**  
2                   **IMMIGRATION AFFAIRS**  
3   **“SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRA-**  
4                   **TION AFFAIRS.**

5           “(a) ESTABLISHMENT.—There is established within  
6 the Department of Homeland Security the Directorate of  
7 Immigration Affairs.

8           “(b) PRINCIPAL OFFICERS.—The principal officers of  
9 the Directorate are the following:

10           “(1) The Under Secretary of Homeland Secu-  
11 rity for Immigration Affairs appointed under section  
12 112.

13           “(2) The Assistant Secretary of Homeland Se-  
14 curity for Immigration Services appointed under sec-  
15 tion 113.

16           “(3) The Assistant Secretary of Homeland Se-  
17 curity for Enforcement and Border Affairs ap-  
18 pointed under section 114.

19           “(c) FUNCTIONS.—Under the authority of the Sec-  
20 retary of Homeland Security, the Directorate shall per-  
21 form the following functions:

22           “(1) Immigration policy, administration, and  
23 inspection functions, as defined in section 112(b).

24           “(2) Immigration service and adjudication func-  
25 tions, as defined in section 113(b).

1           “(3) Immigration enforcement functions, as de-  
2       fined in section 114(b).

3       “(d) AUTHORIZATION OF APPROPRIATIONS.—

4           “(1) IN GENERAL.—There are authorized to be  
5       appropriated to the Department of Homeland Secu-  
6       rity such sums as may be necessary to carry out the  
7       functions of the Directorate.

8           “(2) AVAILABILITY OF FUNDS.—Amounts ap-  
9       propriated pursuant to paragraph (1) are authorized  
10      to remain available until expended.

11      “(e) IMMIGRATION LAWS OF THE UNITED STATES  
12      DEFINED.—In this chapter, the term ‘immigration laws  
13      of the United States’ means the following:

14           “(1) This Act.

15           “(2) Such other statutes, Executive orders, reg-  
16      ulations, or directives, treaties, or other international  
17      agreements to which the United States is a party,  
18      insofar as they relate to the admission to, detention  
19      in, or removal from the United States of aliens, inso-  
20      far as they relate to the naturalization of aliens, or  
21      insofar as they otherwise relate to the status of  
22      aliens.”.

23      (b) CONFORMING AMENDMENTS.—(1) The Immigra-  
24      tion and Nationality Act (8 U.S.C. 1101 et seq.) is  
25      amended—

1 (A) by striking section 101(a)(34) (8 U.S.C.  
2 1101(a)(34)) and inserting the following:

3 “(34) The term ‘Directorate’ means the Directorate  
4 of Immigration Affairs established by section 111.”;

5 (B) by adding at the end of section 101(a) the  
6 following new paragraphs:

7 “(51) The term ‘Secretary’ means the Secretary of  
8 Homeland Security.

9 “(52) The term ‘Department’ means the Department  
10 of Homeland Security.”;

11 (C) by striking “Attorney General” and “De-  
12 partment of Justice” each place it appears and in-  
13 serting “Secretary” and “Department”, respectively;

14 (D) in section 101(a)(17) (8 U.S.C.  
15 1101(a)(17)), by striking “The” and inserting “Ex-  
16 cept as otherwise provided in section 111(e), the;  
17 and

18 (E) by striking “Immigration and Naturaliza-  
19 tion Service”, “Service”, and “Service’s” each place  
20 they appear and inserting “Directorate of Immigra-  
21 tion Affairs”, “Directorate”, and “Directorate’s”,  
22 respectively.

23 (2) Section 6 of the Act entitled “An Act to authorize  
24 certain administrative expenses for the Department of

1 Justice, and for other purposes”, approved July 28, 1950  
2 (64 Stat. 380), is amended—

3 (A) by striking “Immigration and Naturaliza-  
4 tion Service” and inserting “Directorate of Immigra-  
5 tion Affairs”;

6 (B) by striking clause (a); and

7 (C) by redesignating clauses (b), (c), (d), and  
8 (e) as clauses (a), (b), (c), and (d), respectively.

9 (c) REFERENCES.—Any reference in any statute, re-  
10 organization plan, Executive order, regulation, agreement,  
11 determination, or other official document or proceeding to  
12 the Immigration and Naturalization Service shall be  
13 deemed to refer to the Directorate of Immigration Affairs  
14 of the Department of Homeland Security, and any ref-  
15 erence in the immigration laws of the United States (as  
16 defined in section 111(e) of the Immigration and Nation-  
17 ality Act, as added by this section) to the Attorney Gen-  
18 eral shall be deemed to refer to the Secretary of Homeland  
19 Security, acting through the Under Secretary of Home-  
20 land Security for Immigration Affairs.

21 **SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY**  
22 **FOR IMMIGRATION AFFAIRS.**

23 (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
24 gration and Nationality Act, as added by section 1102 of  
25 this Act, is amended by adding at the end the following:

1 **“SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY**  
2 **FOR IMMIGRATION AFFAIRS.**

3 “(a) UNDER SECRETARY OF IMMIGRATION AF-  
4 FAIRS.—The Directorate shall be headed by an Under  
5 Secretary of Homeland Security for Immigration Affairs  
6 who shall be appointed in accordance with section 103(c)  
7 of the Immigration and Nationality Act.

8 “(b) RESPONSIBILITIES OF THE UNDER SEC-  
9 RETARY.—

10 “(1) IN GENERAL.—The Under Secretary shall  
11 be charged with any and all responsibilities and au-  
12 thority in the administration of the Directorate and  
13 of this Act which are conferred upon the Secretary  
14 as may be delegated to the Under Secretary by the  
15 Secretary or which may be prescribed by the Sec-  
16 retary.

17 “(2) DUTIES.—Subject to the authority of the  
18 Secretary under paragraph (1), the Under Secretary  
19 shall have the following duties:

20 “(A) IMMIGRATION POLICY.—The Under  
21 Secretary shall develop and implement policy  
22 under the immigration laws of the United  
23 States. The Under Secretary shall propose, pro-  
24 mulgate, and issue rules, regulations, and state-  
25 ments of policy with respect to any function  
26 within the jurisdiction of the Directorate.



1                   “(B) ADMINISTRATION.—The Under Sec-  
2                   retary shall have responsibility for—

3                   “(i) the administration and enforce-  
4                   ment of the functions conferred upon the  
5                   Directorate under section 1111(c) of this  
6                   Act; and

7                   “(ii) the administration of the Direc-  
8                   torate, including the direction, supervision,  
9                   and coordination of the Bureau of Immi-  
10                  gration Services and the Bureau of En-  
11                  forcement and Border Affairs.

12                  “(C) INSPECTIONS.—The Under Secretary  
13                  shall be directly responsible for the administra-  
14                  tion and enforcement of the functions of the Di-  
15                  rectorate under the immigration laws of the  
16                  United States with respect to the inspection of  
17                  aliens arriving at ports of entry of the United  
18                  States.

19                  “(3) ACTIVITIES.—As part of the duties de-  
20                  scribed in paragraph (2), the Under Secretary shall  
21                  do the following:

22                  “(A) RESOURCES AND PERSONNEL MAN-  
23                  AGEMENT.—The Under Secretary shall manage  
24                  the resources, personnel, and other support re-  
25                  quirements of the Directorate.

1           “(B) INFORMATION RESOURCES MANAGE-  
2           MENT.—Under the direction of the Secretary,  
3           the Under Secretary shall manage the informa-  
4           tion resources of the Directorate, including the  
5           maintenance of records and databases and the  
6           coordination of records and other information  
7           within the Directorate, and shall ensure that  
8           the Directorate obtains and maintains adequate  
9           information technology systems to carry out its  
10          functions.

11          “(C) COORDINATION OF RESPONSE TO  
12          CIVIL RIGHTS VIOLATIONS.—The Under Sec-  
13          retary shall coordinate, with the Civil Rights  
14          Officer of the Department of Homeland Secu-  
15          rity or other officials, as appropriate, the reso-  
16          lution of immigration issues that involve civil  
17          rights violations.

18          “(3) DEFINITION.—In this chapter, the term  
19          “immigration policy, administration, and inspection  
20          functions” means the duties, activities, and powers  
21          described in this subsection.

22          “(c) GENERAL COUNSEL.—

23          “(1) IN GENERAL.—There shall be within the  
24          Directorate a General Counsel, who shall be ap-

1 pointed by the Secretary of Homeland Security, in  
2 consultation with the Under Secretary.

3 “(2) FUNCTION.—The General Counsel shall—

4 “(A) serve as the chief legal officer for the  
5 Directorate; and

6 “(B) be responsible for providing special-  
7 ized legal advice, opinions, determinations, reg-  
8 ulations, and any other assistance to the Under  
9 Secretary with respect to legal matters affecting  
10 the Directorate, and any of its components.

11 “(d) FINANCIAL OFFICERS FOR THE DIRECTORATE  
12 OF IMMIGRATION AFFAIRS.—

13 “(1) CHIEF FINANCIAL OFFICER.—

14 “(A) IN GENERAL.—There shall be within  
15 the Directorate a Chief Financial Officer. The  
16 position of Chief Financial Officer shall be a ca-  
17 reer reserved position in the Senior Executive  
18 Service and shall have the authorities and func-  
19 tions described in section 902 of title 31,  
20 United States Code, in relation to financial ac-  
21 tivities of the Directorate. For purposes of sec-  
22 tion 902(a)(1) of such title, the Under Sec-  
23 retary shall be deemed to be an agency head.

24 “(B) FUNCTIONS.—The Chief Financial  
25 Officer shall be responsible for directing, super-

1           vising, and coordinating all budget formulas  
2           and execution for the Directorate.

3           “(2) DEPUTY CHIEF FINANCIAL OFFICER.—The  
4           Directorate shall be deemed to be an agency for pur-  
5           poses of section 903 of such title (relating to Deputy  
6           Chief Financial Officers).

7           “(e) CHIEF OF POLICY.—

8           “(1) IN GENERAL.—There shall be within the  
9           Directorate a Chief of Policy. Under the authority of  
10          the Under Secretary, the Chief of Policy shall be re-  
11          sponsible for—

12                 “(A) establishing national immigration pol-  
13                 icy and priorities;

14                 “(B) performing policy research and anal-  
15                 ysis on issues arising under the immigration  
16                 laws of the United States; and

17                 “(C) coordinating immigration policy be-  
18                 tween the Directorate, the Service Bureau, and  
19                 the Enforcement Bureau.

20           “(2) WITHIN THE SENIOR EXECUTIVE SERV-  
21           ICE.—The position of Chief of Policy shall be a Sen-  
22           ior Executive Service position under section 5382 of  
23           title 5, United States Code.

24           “(f) CHIEF OF CONGRESSIONAL, INTERGOVERN-  
25           MENTAL, AND PUBLIC AFFAIRS.—

1           “(1) IN GENERAL.—There shall be within the  
2     Directorate a Chief of Congressional, Intergovern-  
3     mental, and Public Affairs. Under the authority of  
4     the Under Secretary, the Chief of Congressional,  
5     Intergovernmental, and Public Affairs shall be re-  
6     sponsible for—

7           “(A) providing to Congress information re-  
8     lating to issues arising under the immigration  
9     laws of the United States, including information  
10    on specific cases;

11          “(B) serving as a liaison with other Fed-  
12    eral agencies on immigration issues; and

13          “(C) responding to inquiries from, and  
14    providing information to, the media on immi-  
15    gration issues.

16          “(2) WITHIN THE SENIOR EXECUTIVE SERV-  
17    ICE.—The position of Chief of Congressional, Inter-  
18    governmental, and Public Affairs shall be a Senior  
19    Executive Service position under section 5382 of  
20    title 5, United States Code.”.

21          (b) COMPENSATION OF THE UNDER SECRETARY.—  
22    Section 5314 of title 5, United States Code, is amended  
23    by adding at the end the following:

24           “Under Secretary of Immigration Affairs, De-  
25    partment of Justice.”.

1 (c) COMPENSATION OF GENERAL COUNSEL AND  
2 CHIEF FINANCIAL OFFICER.—Section 5316 of title 5,  
3 United States Code, is amended by adding at the end the  
4 following:

5 “General Counsel, Directorate of Immigration  
6 Affairs, Department of Homeland Security.

7 “Chief Financial Officer, Directorate of Immi-  
8 gration Affairs, Department of Homeland Secu-  
9 rity.”.

10 (d) REPEALS.—The following provisions of law are  
11 repealed:

12 (1) Section 7 of the Act of March 3, 1891, as  
13 amended (26 Stat. 1085; relating to the establish-  
14 ment of the office of the Commissioner of Immigra-  
15 tion and Naturalization).

16 (2) Section 201 of the Act of June 20, 1956  
17 (70 Stat. 307; relating to the compensation of as-  
18 sistant commissioners and district directors).

19 (3) Section 1 of the Act of March 2, 1895 (28  
20 Stat. 780; relating to special immigrant inspectors).

21 (e) CONFORMING AMENDMENTS.—(1)(A) Section  
22 101(a)(8) of the Immigration and Nationality Act (8  
23 U.S.C. 1101(a)(8)) is amended to read as follows:

1           “(8) The term ‘Under Secretary’ means the  
2           Under Secretary of Homeland Security for Immigra-  
3           tion Affairs who is appointed under section 103(c).”.

4           (B) Except as provided in subparagraph (C), the Im-  
5           migration and Nationality Act (8 U.S.C. 1101 et seq.) is  
6           amended by striking “Commissioner of Immigration and  
7           Naturalization” and “Commissioner” each place they ap-  
8           pear and inserting “Under Secretary of Homeland Secu-  
9           rity for Immigration Affairs” and “Under Secretary”, re-  
10          spectively.

11          (C) The amendments made by subparagraph (B) do  
12          not apply to references to the “Commissioner of Social Se-  
13          curity” in section 290(c) of the Immigration and Nation-  
14          ality Act (8 U.S.C. 1360(c)).

15          (2) Section 103 of the Immigration and Nationality  
16          Act (8 U.S.C. 1103) is amended—

17                (A) in subsection (c), by striking “Commis-  
18                sioner” and inserting “Under Secretary”;

19                (B) in the section heading, by striking “COM-  
20                MISSIONER” and inserting “UNDER SECRETARY”;

21                (C) in subsection (d), by striking “Commis-  
22                sioner” and inserting “Under Secretary”; and

23                (D) in subsection (e), by striking “Commis-  
24                sioner” and inserting “Under Secretary”.

1       (3) Sections 104 and 105 of the Immigration and Na-  
2 tionality Act (8 U.S.C. 1104, 1105) are amended by strik-  
3 ing “Director” each place it appears and inserting “As-  
4 sistant Secretary of State for Consular Affairs”.

5       (4) Section 104(c) of the Immigration and Nation-  
6 ality Act (8 U.S.C. 1104(c)) is amended—

7           (A) in the first sentence, by striking “Passport  
8 Office, a Visa Office,” and inserting “a Passport  
9 Services office, a Visa Services office, an Overseas  
10 Citizen Services office,”; and

11          (B) in the second sentence, by striking “the  
12 Passport Office and the Visa Office” and inserting  
13 “the Passport Services office and the Visa Services  
14 office”.

15       (5) Section 5315 of title 5, United States Code, is  
16 amended by striking the following:

17           “Commissioner of Immigration and Naturaliza-  
18 tion, Department of Justice.”.

19       (f) REFERENCES.—Any reference in any statute, re-  
20 organization plan, Executive order, regulation, agreement,  
21 determination, or other official document or proceeding to  
22 the Commissioner of Immigration and Naturalization shall  
23 be deemed to refer to the Under Secretary of Homeland  
24 Security for Immigration Affairs.



1   **SEC. 1104. BUREAU OF IMMIGRATION SERVICES.**

2           (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
3   gration and Nationality Act, as added by section 1102 and  
4   amended by section 1103, is further amended by adding  
5   at the end the following:

6   **“SEC. 113. BUREAU OF IMMIGRATION SERVICES.**

7           “(a) ESTABLISHMENT OF BUREAU.—

8                   “(1) IN GENERAL.—There is established within  
9   the Directorate a bureau to be known as the Bureau  
10   of Immigration Services (in this chapter referred to  
11   as the ‘Service Bureau’).

12                   “(2) ASSISTANT SECRETARY.—The head of the  
13   Service Bureau shall be the Assistant Secretary of  
14   Homeland Security for Immigration Services (in this  
15   chapter referred to as the ‘Assistant Secretary for  
16   Immigration Services’), who—

17                           “(A) shall be appointed by the Secretary of  
18   Homeland Security, in consultation with the  
19   Under Secretary; and

20                           “(B) shall report directly to the Under  
21   Secretary.

22           “(b) RESPONSIBILITIES OF THE ASSISTANT SEC-  
23   RETARY.—

24                   “(1) IN GENERAL.—Subject to the authority of  
25   the Secretary and the Under Secretary, the Assist-  
26   ant Secretary for Immigration Services shall admin-

1       ister the immigration service functions of the Direc-  
2       torate.

3               “(2) IMMIGRATION SERVICE FUNCTIONS DE-  
4       FINED.—In this chapter, the term ‘immigration  
5       service functions’ means the following functions  
6       under the immigration laws of the United States:

7               “(A) Adjudications of petitions for classi-  
8       fication of nonimmigrant and immigrant status.

9               “(B) Adjudications of applications for ad-  
10      justment of status and change of status.

11              “(C) Adjudications of naturalization appli-  
12      cations.

13              “(D) Adjudications of asylum and refugee  
14      applications.

15              “(E) Adjudications performed at Service  
16      centers.

17              “(F) Determinations concerning custody  
18      and parole of asylum seekers who do not have  
19      prior nonpolitical criminal records and who  
20      have been found to have a credible fear of per-  
21      secution, including determinations under section  
22      236B.

23              “(G) All other adjudications under the im-  
24      migration laws of the United States.

1       “(c) CHIEF BUDGET OFFICER OF THE SERVICE BU-  
2 REAU.—There shall be within the Service Bureau a Chief  
3 Budget Officer. Under the authority of the Chief Finan-  
4 cial Officer of the Directorate, the Chief Budget Officer  
5 of the Service Bureau shall be responsible for monitoring  
6 and supervising all financial activities of the Service Bu-  
7 reau.

8       “(d) QUALITY ASSURANCE.—There shall be within  
9 the Service Bureau an Office of Quality Assurance that  
10 shall develop procedures and conduct audits to—

11               “(1) ensure that the Directorate’s policies with  
12 respect to the immigration service functions of the  
13 Directorate are properly implemented; and

14               “(2) ensure that Service Bureau policies or  
15 practices result in sound records management and  
16 efficient and accurate service.

17       “(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—  
18 There shall be within the Service Bureau an Office of Pro-  
19 fessional Responsibility that shall have the responsibility  
20 for ensuring the professionalism of the Service Bureau  
21 and for receiving and investigating charges of misconduct  
22 or ill treatment made by the public.

23       “(f) TRAINING OF PERSONNEL.—The Assistant Sec-  
24 retary for Immigration Services, in consultation with the

1 Under Secretary, shall have responsibility for determining  
2 the training for all personnel of the Service Bureau.”.

3 (b) COMPENSATION OF ASSISTANT SECRETARY OF  
4 SERVICE BUREAU.—Section 5315 of title 5, United States  
5 Code, is amended by adding at the end the following:

6 “Assistant Secretary of Homeland Security for  
7 Immigration Services, Directorate of Immigration  
8 Affairs, Department of Homeland Security.”.

9 (c) SERVICE BUREAU OFFICES.—

10 (1) IN GENERAL.—Under the direction of the  
11 Secretary, the Under Secretary, acting through the  
12 Assistant Secretary for Immigration Services, shall  
13 establish Service Bureau offices, including suboffices  
14 and satellite offices, in appropriate municipalities  
15 and locations in the United States. In the selection  
16 of sites for the Service Bureau offices, the Under  
17 Secretary shall consider the location’s proximity and  
18 accessibility to the community served, the workload  
19 for which that office shall be responsible, whether  
20 the location would significantly reduce the backlog of  
21 cases in that given geographic area, whether the lo-  
22 cation will improve customer service, and whether  
23 the location is in a geographic area with an increase  
24 in the population to be served. The Under Secretary  
25 shall conduct periodic reviews to assess whether the

1 location and size of the respective Service Bureau of-  
2 fices adequately serve customer service needs.

3 (2) TRANSITION PROVISION.—In determining  
4 the location of Service Bureau offices, including sub-  
5 offices and satellite offices, the Under Secretary  
6 shall first consider maintaining and upgrading of-  
7 fices in existing geographic locations that satisfy the  
8 provisions of paragraph (1). The Under Secretary  
9 shall also explore the feasibility and desirability of  
10 establishing new Service Bureau offices, including  
11 suboffices and satellite offices, in new geographic lo-  
12 cations where there is a demonstrated need.

13 **SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AF-**  
14 **FAIRS.**

15 (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
16 gration and Nationality Act, as added by section 1102 and  
17 amended by sections 1103 and 1104, is further amended  
18 by adding at the end the following:

19 **“SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AF-**  
20 **FAIRS.**

21 “(a) ESTABLISHMENT OF BUREAU.—

22 “(1) IN GENERAL.—There is established within  
23 the Directorate a bureau to be known as the Bureau  
24 of Enforcement and Border Affairs (in this chapter  
25 referred to as the ‘Enforcement Bureau’).

1           “(2) ASSISTANT SECRETARY.—The head of the  
2           Enforcement Bureau shall be the Assistant Sec-  
3           retary of Homeland Security for Enforcement and  
4           Border Affairs (in this chapter referred to as the  
5           ‘Assistant Secretary for Immigration Enforcement’),  
6           who—

7                       “(A) shall be appointed by the Secretary of  
8           Homeland Security, in consultation with the  
9           Under Secretary; and

10                      “(B) shall report directly to the Under  
11           Secretary.

12           “(b) RESPONSIBILITIES OF THE ASSISTANT SEC-  
13   RETARY.—

14                      “(1) IN GENERAL.—Subject to the authority of  
15           the Secretary and the Under Secretary, the Assist-  
16           ant Secretary for Immigration Enforcement shall  
17           administer the immigration enforcement functions of  
18           the Directorate.

19                      “(2) IMMIGRATION ENFORCEMENT FUNCTIONS  
20           DEFINED.—In this chapter, the term ‘immigration  
21           enforcement functions’ means the following functions  
22           under the immigration laws of the United States:

23                               “(A) The border patrol function.

24                               “(B) The detention function, except as  
25           specified in section 113(b)(2)(F).

1                   “(C) The removal function.

2                   “(D) The intelligence function.

3                   “(E) The investigations function.

4           “(c) CHIEF BUDGET OFFICER OF THE ENFORCE-  
5   MENT BUREAU.—There shall be within the Enforcement  
6   Bureau a Chief Budget Officer. Under the authority of  
7   the Chief Financial Officer of the Directorate, the Chief  
8   Budget Officer of the Enforcement Bureau shall be re-  
9   sponsible for monitoring and supervising all financial ac-  
10   tivities of the Enforcement Bureau.

11          “(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—  
12   There shall be within the Enforcement Bureau an Office  
13   of Professional Responsibility that shall have the responsi-  
14   bility for ensuring the professionalism of the Enforcement  
15   Bureau and receiving charges of misconduct or ill treat-  
16   ment made by the public and investigating the charges.

17          “(e) OFFICE OF QUALITY ASSURANCE.—There shall  
18   be within the Enforcement Bureau an Office of Quality  
19   Assurance that shall develop procedures and conduct au-  
20   dits to—

21               “(1) ensure that the Directorate’s policies with  
22       respect to immigration enforcement functions are  
23       properly implemented; and

1           “(2) ensure that Enforcement Bureau policies  
2           or practices result in sound record management and  
3           efficient and accurate recordkeeping.

4           “(f) TRAINING OF PERSONNEL.—The Assistant Sec-  
5           retary for Immigration Enforcement, in consultation with  
6           the Under Secretary, shall have responsibility for deter-  
7           mining the training for all personnel of the Enforcement  
8           Bureau.”.

9           (b) COMPENSATION OF ASSISTANT SECRETARY OF  
10          ENFORCEMENT BUREAU.—Section 5315 of title 5, United  
11          States Code, is amended by adding at the end the fol-  
12          lowing:

13                 “Assistant Secretary of Homeland Security for  
14          Enforcement and Border Affairs, Directorate of Im-  
15          migration Affairs, Department of Homeland Secu-  
16          rity.”.

17          (c) ENFORCEMENT BUREAU OFFICES.—

18                 (1) IN GENERAL.—Under the direction of the  
19          Secretary, the Under Secretary, acting through the  
20          Assistant Secretary for Immigration Enforcement,  
21          shall establish Enforcement Bureau offices, includ-  
22          ing suboffices and satellite offices, in appropriate  
23          municipalities and locations in the United States. In  
24          the selection of sites for the Enforcement Bureau of-  
25          fices, the Under Secretary shall make selections ac-



1 cording to trends in unlawful entry and unlawful  
2 presence, alien smuggling, national security con-  
3 cerns, the number of Federal prosecutions of immi-  
4 gration-related offenses in a given geographic area,  
5 and other enforcement considerations. The Under  
6 Secretary shall conduct periodic reviews to assess  
7 whether the location and size of the respective En-  
8 forcement Bureau offices adequately serve enforce-  
9 ment needs.

10 (2) TRANSITION PROVISION.—In determining  
11 the location of Enforcement Bureau offices, includ-  
12 ing suboffices and satellite offices, the Under Sec-  
13 retary shall first consider maintaining and upgrad-  
14 ing offices in existing geographic locations that sat-  
15 isfy the provisions of paragraph (1). The Under Sec-  
16 retary shall also explore the feasibility and desir-  
17 ability of establishing new Enforcement Bureau of-  
18 fices, including suboffices and satellite offices, in  
19 new geographic locations where there is a dem-  
20 onstrated need.

21 **SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DI-**  
22 **RECTORATE.**

23 (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
24 gration and Nationality Act, as added by section 1102 and

1 amended by sections 1103, 1104, and 1105, is further  
2 amended by adding at the end the following:

3 **“SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION**  
4 **AFFAIRS.**

5 “(a) IN GENERAL.—There is established within the  
6 Directorate the Office of the Ombudsman for Immigration  
7 Affairs, which shall be headed by the Ombudsman.

8 “(b) OMBUDSMAN.—

9 “(1) APPOINTMENT.—The Ombudsman shall be  
10 appointed by the Secretary of Homeland Security, in  
11 consultation with the Under Secretary. The Om-  
12 budsman shall report directly to the Under Sec-  
13 retary.

14 “(2) COMPENSATION.—The Ombudsman shall  
15 be entitled to compensation at the same rate as the  
16 highest rate of basic pay established for the Senior  
17 Executive Service under section 5382 of title 5,  
18 United States Code, or, if the Secretary of Home-  
19 land Security so determines, at a rate fixed under  
20 section 9503 of such title.

21 “(c) FUNCTIONS OF OFFICE.—The functions of the  
22 Office of the Ombudsman for Immigration Affairs shall  
23 include—

24 “(1) to assist individuals in resolving problems  
25 with the Directorate or any component thereof;

1           “(2) to identify systemic problems encountered  
2           by the public in dealings with the Directorate or any  
3           component thereof;

4           “(3) to propose changes in the administrative  
5           practices or regulations of the Directorate, or any  
6           component thereof, to mitigate problems identified  
7           under paragraph (2);

8           “(4) to identify potential changes in statutory  
9           law that may be required to mitigate such problems;  
10          and

11          “(5) to monitor the coverage and geographic  
12          distribution of local offices of the Directorate.

13          “(d) PERSONNEL ACTIONS.—The Ombudsman shall  
14          have the responsibility and authority to appoint local or  
15          regional representatives of the Ombudsman’s Office as in  
16          the Ombudsman’s judgment may be necessary to address  
17          and rectify problems.

18          “(e) ANNUAL REPORT.—Not later than December 31  
19          of each year, the Ombudsman shall submit a report to the  
20          Committee on the Judiciary of the House of Representa-  
21          tives and the Committee on the Judiciary of the Senate  
22          on the activities of the Ombudsman during the fiscal year  
23          ending in that calendar year. Each report shall contain  
24          a full and substantive analysis, in addition to statistical  
25          information, and shall contain—

1           “(1) a description of the initiatives that the Of-  
2           fice of the Ombudsman has taken on improving the  
3           responsiveness of the Directorate;

4           “(2) a summary of serious or systemic problems  
5           encountered by the public, including a description of  
6           the nature of such problems;

7           “(3) an accounting of the items described in  
8           paragraphs (1) and (2) for which action has been  
9           taken, and the result of such action;

10          “(4) an accounting of the items described in  
11          paragraphs (1) and (2) for which action remains to  
12          be completed;

13          “(5) an accounting of the items described in  
14          paragraphs (1) and (2) for which no action has been  
15          taken, the reasons for the inaction, and identify any  
16          Agency official who is responsible for such inaction;

17          “(6) recommendations as may be appropriate to  
18          resolve problems encountered by the public;

19          “(7) recommendations as may be appropriate to  
20          resolve problems encountered by the public, includ-  
21          ing problems created by backlogs in the adjudication  
22          and processing of petitions and applications;

23          “(8) recommendations to resolve problems  
24          caused by inadequate funding or staffing; and

1           “(9) such other information as the Ombudsman  
2           may deem advisable.

3           “(f) AUTHORIZATION OF APPROPRIATIONS.—

4           “(1) IN GENERAL.—There are authorized to be  
5           appropriated to the Office of the Ombudsman such  
6           sums as may be necessary to carry out its functions.

7           “(2) AVAILABILITY OF FUNDS.—Amounts ap-  
8           propriated pursuant to paragraph (1) are authorized  
9           to remain available until expended.”.

10 **SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN**  
11 **THE DIRECTORATE.**

12           (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
13 gration and Nationality Act, as added by section 1102 and  
14 amended by sections 1103, 1104, and 1105, is further  
15 amended by adding at the end the following:

16 **“SEC. 116. OFFICE OF IMMIGRATION STATISTICS.**

17           “(a) ESTABLISHMENT.—There is established within  
18 the Directorate an Office of Immigration Statistics (in this  
19 section referred to as the ‘Office’), which shall be headed  
20 by a Director who shall be appointed by the Secretary of  
21 Homeland Security, in consultation with the Under Sec-  
22 retary. The Office shall collect, maintain, compile, analyze,  
23 publish, and disseminate information and statistics about  
24 immigration in the United States, including information  
25 and statistics involving the functions of the Directorate

1 and the Executive Office for Immigration Review (or its  
2 successor entity).

3 “(b) RESPONSIBILITIES OF DIRECTOR.—The Direc-  
4 tor of the Office shall be responsible for the following:

5 “(1) STATISTICAL INFORMATION.—Maintenance  
6 of all immigration statistical information of the Di-  
7 rectorate of Immigration Affairs.

8 “(2) STANDARDS OF RELIABILITY AND VALID-  
9 ITY.—Establishment of standards of reliability and  
10 validity for immigration statistics collected by the  
11 Bureau of Immigration Services, the Bureau of En-  
12 forcement, and the Executive Office for Immigration  
13 Review (or its successor entity).

14 “(c) RELATION TO THE DIRECTORATE OF IMMIGRA-  
15 TION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMI-  
16 GRATION REVIEW.—

17 “(1) OTHER AUTHORITIES.—The Directorate  
18 and the Executive Office for Immigration Review (or  
19 its successor entity) shall provide statistical informa-  
20 tion to the Office from the operational data systems  
21 controlled by the Directorate and the Executive Of-  
22 fice for Immigration Review (or its successor entity),  
23 respectively, as requested by the Office, for the pur-  
24 pose of meeting the responsibilities of the Director  
25 of the Office.

1           “(2) DATABASES.—The Director of the Office,  
2           under the direction of the Secretary, shall ensure the  
3           interoperability of the databases of the Directorate,  
4           the Bureau of Immigration Services, the Bureau of  
5           Enforcement, and the Executive Office for Immigra-  
6           tion Review (or its successor entity) to permit the  
7           Director of the Office to perform the duties of such  
8           office.”.

9           (b) TRANSFER OF FUNCTIONS.—There are trans-  
10          ferred to the Directorate of Immigration Affairs for exer-  
11          cise by the Under Secretary through the Office of Immi-  
12          gration Statistics established by section 116 of the Immi-  
13          gration and Nationality Act, as added by subsection (a),  
14          the functions performed by the Statistics Branch of the  
15          Office of Policy and Planning of the Immigration and Nat-  
16          uralization Service, and the statistical functions performed  
17          by the Executive Office for Immigration Review (or its  
18          successor entity), on the day before the effective date of  
19          this title.

20       **SEC. 1108. CLERICAL AMENDMENTS.**

21           The table of contents of the Immigration and Nation-  
22          ality Act is amended—

23           (1) by inserting after the item relating to the  
24          heading for title I the following:

          “CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES”;

1           (2) by striking the item relating to section 103  
2           and inserting the following:

“Sec. 103. Powers and duties of the Secretary of Homeland Security and the  
          Under Secretary of Homeland Security for Immigration Af-  
          fairs.”;

3           and

4           (3) by inserting after the item relating to sec-  
5           tion 106 the following:

“CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

“Sec. 111. Establishment of Directorate of Immigration Affairs.

“Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.

“Sec. 113. Bureau of Immigration Services.

“Sec. 114. Bureau of Enforcement and Border Affairs.

“Sec. 115. Office of the Ombudsman for Immigration Affairs.

“Sec. 116. Office of Immigration Statistics.”.

## 6   **Subtitle B—Transition Provisions**

### 7   **SEC. 1111. TRANSFER OF FUNCTIONS.**

8           (a) IN GENERAL.—

9           (1) FUNCTIONS OF THE ATTORNEY GEN-  
10          ERAL.—All functions under the immigration laws of  
11          the United States vested by statute in, or exercised  
12          by, the Attorney General, immediately prior to the  
13          effective date of this title, are transferred to the Sec-  
14          retary on such effective date for exercise by the Sec-  
15          retary through the Under Secretary in accordance  
16          with section 112(b) of the Immigration and Nation-  
17          ality Act, as added by section 1103 of this Act.

18          (2) FUNCTIONS OF THE COMMISSIONER OR THE  
19          INS.—All functions under the immigration laws of  
20          the United States vested by statute in, or exercised



1 by, the Commissioner of Immigration and Natu-  
2 ralization or the Immigration and Naturalization  
3 Service (or any officer, employee, or component  
4 thereof), immediately prior to the effective date of  
5 this title, are transferred to the Directorate of Immi-  
6 gration Affairs on such effective date for exercise by  
7 the Under Secretary in accordance with section  
8 112(b) of the Immigration and Nationality Act, as  
9 added by section 1103 of this Act.

10 (b) EXERCISE OF AUTHORITIES.—Except as other-  
11 wise provided by law, the Under Secretary may, for pur-  
12 poses of performing any function transferred to the Direc-  
13 torate of Immigration Affairs under subsection (a), exer-  
14 cise all authorities under any other provision of law that  
15 were available with respect to the performance of that  
16 function to the official responsible for the performance of  
17 the function immediately before the effective date of the  
18 transfer of the function under this title.

19 **SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RE-**  
20 **SOURCES.**

21 Subject to section 1531 of title 31, United States  
22 Code, upon the effective date of this title, there are trans-  
23 ferred to the Under Secretary for appropriate allocation  
24 in accordance with section 1115—

1           (1) the personnel of the Department of Justice  
2       employed in connection with the functions trans-  
3       ferred under this title; and

4           (2) the assets, liabilities, contracts, property,  
5       records, and unexpended balance of appropriations,  
6       authorizations, allocations, and other funds em-  
7       ployed, held, used, arising from, available to, or to  
8       be made available to the Immigration and Natu-  
9       ralization Service in connection with the functions  
10      transferred pursuant to this title.

11 **SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNC-**  
12 **TIONS AND RESOURCES.**

13       Under the direction of the Secretary, the Under Sec-  
14      retary shall determine, in accordance with the cor-  
15      responding criteria set forth in sections 1112(b), 1113(b),  
16      and 1114(b) of the Immigration and Nationality Act (as  
17      added by this title)—

18           (1) which of the functions transferred under  
19      section 1111 are—

20           (A) immigration policy, administration,  
21      and inspection functions;

22           (B) immigration service functions; and

23           (C) immigration enforcement functions;

24      and

1           (2) which of the personnel, assets, liabilities,  
2           grants, contracts, property, records, and unexpended  
3           balances of appropriations, authorizations, alloca-  
4           tions, and other funds transferred under section  
5           1112 were held or used, arose from, were available  
6           to, or were made available, in connection with the  
7           performance of the respective functions specified in  
8           paragraph (1) immediately prior to the effective date  
9           of this title.

10 **SEC. 1114. DELEGATION AND RESERVATION OF FUNC-**  
11 **TIONS.**

12           (a) IN GENERAL.—

13           (1) DELEGATION TO THE BUREAUS.—Under  
14           the direction of the Secretary, and subject to section  
15           112(b)(1) of the Immigration and Nationality Act  
16           (as added by section 1103), the Under Secretary  
17           shall delegate—

18                   (A) immigration service functions to the  
19                   Assistant Secretary for Immigration Services;  
20                   and

21                   (B) immigration enforcement functions to  
22                   the Assistant Secretary for Immigration En-  
23                   forcement.

24           (2) RESERVATION OF FUNCTIONS.—Subject to  
25           section 112(b)(1) of the Immigration and Nation-

1        ality Act (as added by section 1103), immigration  
2        policy, administration, and inspection functions shall  
3        be reserved for exercise by the Under Secretary.

4        (b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—  
5        Delegations made under subsection (a) may be on a non-  
6        exclusive basis as the Under Secretary may determine may  
7        be necessary to ensure the faithful execution of the Under  
8        Secretary's responsibilities and duties under law.

9        (c) EFFECT OF DELEGATIONS.—Except as otherwise  
10       expressly prohibited by law or otherwise provided in this  
11       title, the Under Secretary may make delegations under  
12       this subsection to such officers and employees of the office  
13       of the Under Secretary, the Service Bureau, and the En-  
14       forcement Bureau, respectively, as the Under Secretary  
15       may designate, and may authorize successive redelegations  
16       of such functions as may be necessary or appropriate. No  
17       delegation of functions under this subsection or under any  
18       other provision of this title shall relieve the official to  
19       whom a function is transferred under this title of responsi-  
20       bility for the administration of the function.

21       (d) STATUTORY CONSTRUCTION.—Nothing in this di-  
22       vision may be construed to limit the authority of the  
23       Under Secretary, acting directly or by delegation under  
24       the Secretary, to establish such offices or positions within  
25       the Directorate of Immigration Affairs, in addition to

1 those specified by this division, as the Under Secretary  
2 may determine to be necessary to carry out the functions  
3 of the Directorate.

4 **SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RE-**  
5 **SOURCES.**

6 (a) **AUTHORITY OF THE UNDER SECRETARY.—**

7 (1) **IN GENERAL.**—Subject to paragraph (2)  
8 and section 1114(b), the Under Secretary shall  
9 make allocations of personnel, assets, liabilities,  
10 grants, contracts, property, records, and unexpended  
11 balances of appropriations, authorizations, alloca-  
12 tions, and other funds held, used, arising from,  
13 available to, or to be made available in connection  
14 with the performance of the respective functions, as  
15 determined under section 1113, in accordance with  
16 the delegation of functions and the reservation of  
17 functions made under section 1114.

18 (2) **LIMITATION.**—Unexpended funds trans-  
19 ferred pursuant to section 1112 shall be used only  
20 for the purposes for which the funds were originally  
21 authorized and appropriated.

22 (b) **AUTHORITY TO TERMINATE AFFAIRS OF INS.—**

23 The Attorney General in consultation with the Secretary,  
24 shall provide for the termination of the affairs of the Im-  
25 migration and Naturalization Service and such further

1 measures and dispositions as may be necessary to effec-  
2 tuate the purposes of this division.

3 (c) TREATMENT OF SHARED RESOURCES.—The  
4 Under Secretary is authorized to provide for an appro-  
5 priate allocation, or coordination, or both, of resources in-  
6 volved in supporting shared support functions for the of-  
7 fice of the Under Secretary, the Service Bureau, and the  
8 Enforcement Bureau. The Under Secretary shall maintain  
9 oversight and control over the shared computer databases  
10 and systems and records management.

11 **SEC. 1116. SAVINGS PROVISIONS.**

12 (a) LEGAL DOCUMENTS.—All orders, determinations,  
13 rules, regulations, permits, grants, loans, contracts, rec-  
14 ognition of labor organizations, agreements, including col-  
15 lective bargaining agreements, certificates, licenses, and  
16 privileges—

17 (1) that have been issued, made, granted, or al-  
18 lowed to become effective by the President, the At-  
19 torney General, the Commissioner of the Immigra-  
20 tion and Naturalization Service, their delegates, or  
21 any other Government official, or by a court of com-  
22 petent jurisdiction, in the performance of any func-  
23 tion that is transferred under this title; and

24 (2) that are in effect on the effective date of  
25 such transfer (or become effective after such date

1       pursuant to their terms as in effect on such effective  
2       date);  
3 shall continue in effect according to their terms until  
4 modified, terminated, superseded, set aside, or revoked in  
5 accordance with law by the President, any other author-  
6 ized official, a court of competent jurisdiction, or operation  
7 of law, except that any collective bargaining agreement  
8 shall remain in effect until the date of termination speci-  
9 fied in the agreement.

10       (b) PROCEEDINGS.—

11           (1) PENDING.—Sections 111 through 116 of  
12 the Immigration and Nationality Act, as added by  
13 subtitle A of this title, shall not affect any pro-  
14 ceeding or any application for any benefit, service, li-  
15 cense, permit, certificate, or financial assistance  
16 pending on the effective date of this title before an  
17 office whose functions are transferred under this  
18 title, but such proceedings and applications shall be  
19 continued.

20           (2) ORDERS.—Orders shall be issued in such  
21 proceedings, appeals shall be taken therefrom, and  
22 payments shall be made pursuant to such orders, as  
23 if this Act had not been enacted, and orders issued  
24 in any such proceeding shall continue in effect until  
25 modified, terminated, superseded, or revoked by a

1       duly authorized official, by a court of competent ju-  
2       risdiction, or by operation of law.

3           (3) DISCONTINUANCE OR MODIFICATION.—

4       Nothing in this section shall be considered to pro-  
5       hibit the discontinuance or modification of any such  
6       proceeding under the same terms and conditions and  
7       to the same extent that such proceeding could have  
8       been discontinued or modified if this section had not  
9       been enacted.

10       (c) SUITS.—This title, and the amendments made by  
11       this title, shall not affect suits commenced before the ef-  
12       fective date of this title, and in all such suits, proceeding  
13       shall be had, appeals taken, and judgments rendered in  
14       the same manner and with the same effect as if this title,  
15       and the amendments made by this title, had not been en-  
16       acted.

17       (d) NONABATEMENT OF ACTIONS.—No suit, action,  
18       or other proceeding commenced by or against the Depart-  
19       ment of Justice or the Immigration and Naturalization  
20       Service, or by or against any individual in the official ca-  
21       pacity of such individual as an officer or employee in con-  
22       nection with a function transferred pursuant to this sec-  
23       tion, shall abate by reason of the enactment of this Act.

24       (e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF  
25       PARTIES.—If any Government officer in the official capac-



1 ity of such officer is party to a suit with respect to a func-  
2 tion of the officer, and such function is transferred under  
3 this title to any other officer or office, then such suit shall  
4 be continued with the other officer or the head of such  
5 other office, as applicable, substituted or added as a party.

6 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-  
7 VIEW.—Except as otherwise provided by this title, any  
8 statutory requirements relating to notice, hearings, action  
9 upon the record, or administrative or judicial review that  
10 apply to any function transferred under this title shall  
11 apply to the exercise of such function by the head of the  
12 office, and other officers of the office, to which such func-  
13 tion is transferred.

14 **SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF**  
15 **IMMIGRATION AND NATURALIZATION.**

16 The individual serving as the Commissioner of Immi-  
17 gration and Naturalization on the day before the effective  
18 date of this title may serve as Under Secretary until the  
19 date on which an Under Secretary is appointed under sec-  
20 tion 112 of the Immigration and Nationality Act, as added  
21 by section 1103.

22 **SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**  
23 **AUTHORITIES NOT AFFECTED.**

24 Nothing in this title, or any amendment made by this  
25 title, may be construed to authorize or require the transfer

1 or delegation of any function vested in, or exercised by  
2 the Executive Office for Immigration Review of the De-  
3 partment of Justice (or its successor entity), or any offi-  
4 cer, employee, or component thereof immediately prior to  
5 the effective date of this title.

6 **SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.**

7 Nothing in this title, or any amendment made by this  
8 title, may be construed to authorize or require the transfer  
9 or delegation of any function vested in, or exercised by—

10 (1) the Secretary of State under the State De-  
11 partment Basic Authorities Act of 1956, or under  
12 the immigration laws of the United States, imme-  
13 diately prior to the effective date of this title, with  
14 respect to the issuance and use of passports and  
15 visas;

16 (2) the Secretary of Labor or any official of the  
17 Department of Labor immediately prior to the effec-  
18 tive date of this title, with respect to labor certifi-  
19 cations or any other authority under the immigra-  
20 tion laws of the United States; or

21 (3) except as otherwise specifically provided in  
22 this division, any other official of the Federal Gov-  
23 ernment under the immigration laws of the United  
24 States immediately prior to the effective date of this  
25 title.

1 **SEC. 1120. TRANSITION FUNDING.**

2 (a) AUTHORIZATION OF APPROPRIATIONS FOR TRAN-  
3 SITION.—

4 (1) IN GENERAL.—There are authorized to be  
5 appropriated to the Department of Homeland Secu-  
6 rity such sums as may be necessary—

7 (A) to effect—

8 (i) the abolition of the Immigration  
9 and Naturalization Service;

10 (ii) the establishment of the Direc-  
11 torate of Immigration Affairs and its com-  
12 ponents, the Bureau of Immigration Serv-  
13 ices, and the Bureau of Enforcement and  
14 Border Affairs; and

15 (iii) the transfer of functions required  
16 to be made under this division; and

17 (B) to carry out any other duty that is  
18 made necessary by this division, or any amend-  
19 ment made by this division.

20 (2) ACTIVITIES SUPPORTED.—Activities sup-  
21 ported under paragraph (1) include—

22 (A) planning for the transfer of functions  
23 from the Immigration and Naturalization Serv-  
24 ice to the Directorate of Immigration Affairs,  
25 including the preparation of any reports and

1 implementation plans necessary for such trans-  
2 fer;

3 (B) the division, acquisition, and disposi-  
4 tion of—

5 (i) buildings and facilities;

6 (ii) support and infrastructure re-  
7 sources; and

8 (iii) computer hardware, software, and  
9 related documentation;

10 (C) other capital expenditures necessary to  
11 effect the transfer of functions described in this  
12 paragraph;

13 (D) revision of forms, stationery, logos,  
14 and signage;

15 (E) expenses incurred in connection with  
16 the transfer and training of existing personnel  
17 and hiring of new personnel; and

18 (F) such other expenses necessary to effect  
19 the transfers, as determined by the Secretary.

20 (b) AVAILABILITY OF FUNDS.—Amounts appro-  
21 priated pursuant to subsection (a) are authorized to re-  
22 main available until expended.

23 (c) TRANSITION ACCOUNT.—

24 (1) ESTABLISHMENT.—There is established in  
25 the general fund of the Treasury of the United

1 States a separate account, which shall be known as  
2 the “Directorate of Immigration Affairs Transition  
3 Account” (in this section referred to as the “Ac-  
4 count”).

5 (2) USE OF ACCOUNT.—There shall be depos-  
6 ited into the Account all amounts appropriated  
7 under subsection (a) and amounts reprogrammed for  
8 the purposes described in subsection (a).

9 (d) REPORT TO CONGRESS ON TRANSITION.—Begin-  
10 ning not later than 90 days after the effective date of divi-  
11 sion A of this Act, and at the end of each fiscal year in  
12 which appropriations are made pursuant to subsection (c),  
13 the Secretary of Homeland Security shall submit a report  
14 to Congress concerning the availability of funds to cover  
15 transition costs, including—

16 (1) any unobligated balances available for such  
17 purposes; and

18 (2) a calculation of the amount of appropria-  
19 tions that would be necessary to fully fund the ac-  
20 tivities described in subsection (a).

21 (e) EFFECTIVE DATE.—This section shall take effect  
22 1 year after the effective date of division A of this Act.

## **Subtitle C—Miscellaneous Provisions**

### **SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.**

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking “services, including the costs of similar services provided without charge to asylum applicants or other immigrants” and inserting “services”.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available

1 for such purposes, there are authorized to be appro-  
2 priated such sums as may be necessary to carry out  
3 the provisions of sections 207 through 209 of the  
4 Immigration and Nationality Act.

5 (2) AVAILABILITY OF FUNDS.—Funds appro-  
6 priated pursuant to paragraph (1) are authorized to  
7 remain available until expended.

8 (d) SEPARATION OF FUNDING.—

9 (1) IN GENERAL.—There shall be established  
10 separate accounts in the Treasury of the United  
11 States for appropriated funds and other collections  
12 available for the Bureau of Immigration Services  
13 and the Bureau of Enforcement and Border Affairs.

14 (2) FEES.—Fees imposed for a particular serv-  
15 ice, application, or benefit shall be deposited into the  
16 account established under paragraph (1) that is for  
17 the bureau with jurisdiction over the function to  
18 which the fee relates.

19 (3) FEES NOT TRANSFERABLE.—No fee may be  
20 transferred between the Bureau of Immigration  
21 Services and the Bureau of Enforcement and Border  
22 Affairs for purposes not authorized by section 286  
23 of the Immigration and Nationality Act, as amended  
24 by subsection (a).

1 (e) AUTHORIZATION OF APPROPRIATIONS FOR BACK-  
2 LOG REDUCTION.—

3 (1) IN GENERAL.—There are authorized to be  
4 appropriated such sums as may be necessary for  
5 each of the fiscal years 2003 through 2006 to carry  
6 out the Immigration Services and Infrastructure Im-  
7 provement Act of 2000 (title II of Public Law 106–  
8 313).

9 (2) AVAILABILITY OF FUNDS.—Amounts appro-  
10 priated under paragraph (1) are authorized to re-  
11 main available until expended.

12 (3) INFRASTRUCTURE IMPROVEMENT AC-  
13 COUNT.—Amounts appropriated under paragraph  
14 (1) shall be deposited into the Immigration Services  
15 and Infrastructure Improvements Account estab-  
16 lished by section 204(a)(2) of title II of Public Law  
17 106–313.

18 **SEC. 1122. APPLICATION OF INTERNET-BASED TECH-**  
19 **NOLOGIES.**

20 (a) ESTABLISHMENT OF ON-LINE DATABASE.—

21 (1) IN GENERAL.—Not later than 2 years after  
22 the effective date of division A, the Secretary, in  
23 consultation with the Under Secretary and the Tech-  
24 nology Advisory Committee, shall establish an Inter-  
25 net-based system that will permit an immigrant,



1 nonimmigrant, employer, or other person who files  
2 any application, petition, or other request for any  
3 benefit under the immigration laws of the United  
4 States access to on-line information about the proc-  
5 essing status of the application, petition, or other re-  
6 quest.

7 (2) PRIVACY CONSIDERATIONS.—The Under  
8 Secretary shall consider all applicable privacy issues  
9 in the establishment of the Internet system de-  
10 scribed in paragraph (1). No personally identifying  
11 information shall be accessible to unauthorized per-  
12 sons.

13 (3) MEANS OF ACCESS.—The on-line informa-  
14 tion under the Internet system described in para-  
15 graph (1) shall be accessible to the persons described  
16 in paragraph (1) through a personal identification  
17 number (PIN) or other personalized password.

18 (4) PROHIBITION ON FEES.—The Under Sec-  
19 retary shall not charge any immigrant, non-  
20 immigrant, employer, or other person described in  
21 paragraph (1) a fee for access to the information in  
22 the database that pertains to that person.

23 (b) FEASIBILITY STUDY FOR ON-LINE FILING AND  
24 IMPROVED PROCESSING.—

25 (1) ON-LINE FILING.—

1 (A) IN GENERAL.—The Under Secretary,  
2 in consultation with the Technology Advisory  
3 Committee, shall conduct a study to determine  
4 the feasibility of on-line filing of the documents  
5 described in subsection (a).

6 (B) STUDY ELEMENTS.—The study  
7 shall—

8 (i) include a review of computerization  
9 and technology of the Immigration and  
10 Naturalization Service (or successor agen-  
11 cy) relating to immigration services and  
12 the processing of such documents;

13 (ii) include an estimate of the time-  
14 frame and costs of implementing on-line  
15 filing of such documents; and

16 (iii) consider other factors in imple-  
17 menting such a filing system, including the  
18 feasibility of the payment of fees on-line.

19 (2) REPORT.—Not later than 2 years after the  
20 effective date of division A, the Under Secretary  
21 shall submit to the Committees on the Judiciary of  
22 the Senate and the House of Representatives a re-  
23 port on the findings of the study conducted under  
24 this subsection.

25 (c) TECHNOLOGY ADVISORY COMMITTEE.—

1           (1) ESTABLISHMENT.—Not later than 1 year  
2       after the effective date of division A, the Under Sec-  
3       retary shall establish, after consultation with the  
4       Committees on the Judiciary of the Senate and the  
5       House of Representatives, an advisory committee (in  
6       this section referred to as the “Technology Advisory  
7       Committee”) to assist the Under Secretary in—

8           (A) establishing the tracking system under  
9       subsection (a); and

10          (B) conducting the study under subsection  
11       (b).

12          (2) COMPOSITION.—The Technology Advisory  
13       Committee shall be composed of—

14          (A) experts from the public and private  
15       sector capable of establishing and implementing  
16       the system in an expeditious manner; and

17          (B) representatives of persons or entities  
18       who may use the tracking system described in  
19       subsection (a) and the on-line filing system de-  
20       scribed in subsection (b)(1).

21 **SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM**  
22 **SEEKERS.**

23       (a) ASSIGNMENTS OF ASYLUM OFFICERS.—The  
24       Under Secretary shall assign asylum officers to major  
25       ports of entry in the United States to assist in the inspec-

1 tion of asylum seekers. For other ports of entry, the Under  
2 Secretary shall take steps to ensure that asylum officers  
3 participate in the inspections process.

4 (b) AMENDMENT OF THE IMMIGRATION AND NA-  
5 TIONALITY ACT.—Chapter 4 of title II of the Immigration  
6 and Nationality Act (8 U.S.C. 1221 et seq.) is amended  
7 by inserting after section 236A the following new section:  
8 **“SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM**  
9 **SEEKERS.**

10 “(a) DEVELOPMENT OF ALTERNATIVES TO DETEN-  
11 TION.—The Under Secretary shall—

12 “(1) authorize and promote the utilization of al-  
13 ternatives to the detention of asylum seekers who do  
14 not have nonpolitical criminal records; and

15 “(2) establish conditions for the detention of  
16 asylum seekers that ensure a safe and humane envi-  
17 ronment.

18 “(b) SPECIFIC ALTERNATIVES FOR CONSIDER-  
19 ATION.—The Under Secretary shall consider the following  
20 specific alternatives to the detention of asylum seekers de-  
21 scribed in subsection (a):

22 “(1) Parole from detention.

23 “(2) For individuals not otherwise qualified for  
24 parole under paragraph (1), parole with appearance  
25 assistance provided by private nonprofit voluntary

1 agencies with expertise in the legal and social needs  
2 of asylum seekers.

3 “(3) For individuals not otherwise qualified for  
4 parole under paragraph (1) or (2), non-secure shel-  
5 ter care or group homes operated by private non-  
6 profit voluntary agencies with expertise in the legal  
7 and social needs of asylum seekers.

8 “(4) Noninstitutional settings for minors such  
9 as foster care or group homes operated by private  
10 nonprofit voluntary agencies with expertise in the  
11 legal and social needs of asylum seekers.

12 “(c) REGULATIONS.—The Under Secretary shall pro-  
13 mulgate such regulations as may be necessary to carry out  
14 this section.

15 “(d) DEFINITION.—In this section, the term ‘asylum  
16 seeker’ means any applicant for asylum under section 208  
17 or any alien who indicates an intention to apply for asylum  
18 under that section.”.

19 (b) CLERICAL AMENDMENT.—The table of contents  
20 of the Immigration and Nationality Act is amended by in-  
21 serting after the item relating to section 236A the fol-  
22 lowing new item:

“Sec. 236B. Alternatives to detention of asylum seekers.”.

1           **Subtitle D—Effective Date**

2   **SEC. 1131. EFFECTIVE DATE.**

3           This title, and the amendments made by this title,  
4 shall take effect one year after the effective date of divi-  
5 sion A of this Act.

6           **TITLE XII—UNACCOMPANIED**  
7           **ALIEN CHILD PROTECTION**

8   **SEC. 1201. SHORT TITLE.**

9           This title may be cited as the “Unaccompanied Alien  
10 Child Protection Act of 2002”.

11   **SEC. 1202. DEFINITIONS.**

12           (a) IN GENERAL.—In this title:

13               (1) DIRECTOR.—The term “Director” means  
14 the Director of the Office.

15               (2) OFFICE.—The term “Office” means the Of-  
16 fice of Refugee Resettlement as established by sec-  
17 tion 411 of the Immigration and Nationality Act.

18               (3) SERVICE.—The term “Service” means the  
19 Immigration and Naturalization Service (or, upon  
20 the effective date of title XI, the Directorate of Im-  
21 migration Affairs).

22               (4) UNACCOMPANIED ALIEN CHILD.—The term  
23 “unaccompanied alien child” means a child who—

24                       (A) has no lawful immigration status in  
25 the United States;

1 (B) has not attained the age of 18; and

2 (C) with respect to whom—

3 (i) there is no parent or legal guard-  
4 ian in the United States; or

5 (ii) no parent or legal guardian in the  
6 United States is available to provide care  
7 and physical custody.

8 (5) VOLUNTARY AGENCY.—The term “vol-  
9 untary agency” means a private, nonprofit voluntary  
10 agency with expertise in meeting the cultural, devel-  
11 opmental, or psychological needs of unaccompanied  
12 alien children as licensed by the appropriate State  
13 and certified by the Director of the Office of Ref-  
14 ugee Resettlement.

15 (b) AMENDMENTS TO THE IMMIGRATION AND NA-  
16 TIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is  
17 amended by adding at the end the following new para-  
18 graphs:

19 “(53) The term ‘unaccompanied alien child’ means  
20 a child who—

21 “(A) has no lawful immigration status in the  
22 United States;

23 “(B) has not attained the age of 18; and

24 “(C) with respect to whom—

1 “(i) there is no parent or legal guardian in  
2 the United States; or

3 “(ii) no parent or legal guardian in the  
4 United States is able to provide care and phys-  
5 ical custody.

6 “(54) The term ‘unaccompanied refugee children’  
7 means persons described in paragraph (42) who—

8 “(A) have not attained the age of 18; and

9 “(B) with respect to whom there are no parents  
10 or legal guardians available to provide care and  
11 physical custody.”.

## 12 **Subtitle A—Structural Changes**

### 13 **SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE** 14 **RESETTLEMENT WITH RESPECT TO UNAC-** 15 **COMPANIED ALIEN CHILDREN.**

16 (a) IN GENERAL.—

17 (1) RESPONSIBILITIES OF THE OFFICE.—The  
18 Office shall be responsible for—

19 (A) coordinating and implementing the  
20 care and placement for unaccompanied alien  
21 children who are in Federal custody by reason  
22 of their immigration status; and

23 (B) ensuring minimum standards of deten-  
24 tion for all unaccompanied alien children.



1           (2) DUTIES OF THE DIRECTOR WITH RESPECT  
2           TO UNACCOMPANIED ALIEN CHILDREN.—The Direc-  
3           tor shall be responsible under this title for—

4                   (A) ensuring that the best interests of the  
5                   child are considered in decisions and actions re-  
6                   lating to the care and placement of an unac-  
7                   companied alien child;

8                   (B) making placement, release, and deten-  
9                   tion determinations for all unaccompanied alien  
10                  children in the custody of the Office;

11                  (C) implementing the placement, release,  
12                  and detention determinations made by the Of-  
13                  fice;

14                  (D) convening, in the absence of the As-  
15                  sistant Secretary, Administration for Children  
16                  and Families of the Department of Health and  
17                  Human Services, the Interagency Task Force  
18                  on Unaccompanied Alien Children established  
19                  in section 1212;

20                  (E) identifying a sufficient number of  
21                  qualified persons, entities, and facilities to  
22                  house unaccompanied alien children in accord-  
23                  ance with sections 1222 and 1223;

1 (F) overseeing the persons, entities, and  
2 facilities described in sections 1222 and 1223 to  
3 ensure their compliance with such provisions;

4 (G) compiling, updating, and publishing at  
5 least annually a State-by-State list of profes-  
6 sionals or other entities qualified to contract  
7 with the Office to provide the services described  
8 in sections 1231 and 1232;

9 (H) maintaining statistical information  
10 and other data on unaccompanied alien children  
11 in the Office's custody and care, which shall  
12 include—

13 (i) biographical information such as  
14 the child's name, gender, date of birth,  
15 country of birth, and country of habitual  
16 residence;

17 (ii) the date on which the child came  
18 into Federal custody, including each in-  
19 stance in which such child came into the  
20 custody of—

21 (I) the Service; or

22 (II) the Office;

23 (iii) information relating to the cus-  
24 tody, detention, release, and repatriation of

1 unaccompanied alien children who have  
2 been in the custody of the Office;

3 (iv) in any case in which the child is  
4 placed in detention, an explanation relating  
5 to the detention; and

6 (v) the disposition of any actions in  
7 which the child is the subject;

8 (I) collecting and compiling statistical in-  
9 formation from the Service, including Border  
10 Patrol and inspections officers, on the unaccom-  
11 panied alien children with whom they come into  
12 contact; and

13 (J) conducting investigations and inspec-  
14 tions of facilities and other entities in which un-  
15 accompanied alien children reside.

16 (3) DUTIES WITH RESPECT TO FOSTER CARE.—

17 In carrying out the duties described in paragraph  
18 (3)(F), the Director is encouraged to utilize the ref-  
19 ugee children foster care system established under  
20 section 412(d)(2) of the Immigration and Nation-  
21 ality Act for the placement of unaccompanied alien  
22 children.

23 (4) POWERS.—In carrying out the duties under  
24 paragraph (3), the Director shall have the power  
25 to—

1 (A) contract with service providers to per-  
2 form the services described in sections 1222,  
3 1223, 1231, and 1232; and

4 (B) compel compliance with the terms and  
5 conditions set forth in section 1223, including  
6 the power to terminate the contracts of pro-  
7 viders that are not in compliance with such con-  
8 ditions and reassign any unaccompanied alien  
9 child to a similar facility that is in compliance  
10 with such section.

11 (b) NO EFFECT ON SERVICE, EOIR, AND DEPART-  
12 MENT OF STATE ADJUDICATORY RESPONSIBILITIES.—  
13 Nothing in this title may be construed to transfer the re-  
14 sponsibility for adjudicating benefit determinations under  
15 the Immigration and Nationality Act from the authority  
16 of any official of the Service, the Executive Office of Immi-  
17 gration Review (or successor entity), or the Department  
18 of State.

19 **SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE**  
20 **ON UNACCOMPANIED ALIEN CHILDREN.**

21 (a) ESTABLISHMENT.—There is established an Inter-  
22 agency Task Force on Unaccompanied Alien Children.

23 (b) COMPOSITION.—The Task Force shall consist of  
24 the following members:

1           (1) The Assistant Secretary, Administration for  
2       Children and Families, Department of Health and  
3       Human Services.

4           (2) The Under Secretary of Homeland Security  
5       for Immigration Affairs.

6           (3) The Assistant Secretary of State for Popu-  
7       lation, Refugees, and Migration.

8           (4) The Director.

9           (5) Such other officials in the executive branch  
10      of Government as may be designated by the Presi-  
11      dent.

12       (c) CHAIRMAN.—The Task Force shall be chaired by  
13      the Assistant Secretary, Administration for Children and  
14      Families, Department of Health and Human Services.

15       (d) ACTIVITIES OF THE TASK FORCE.—In consulta-  
16      tion with nongovernmental organizations, the Task Force  
17      shall—

18           (1) measure and evaluate the progress of the  
19      United States in treating unaccompanied alien chil-  
20      dren in United States custody; and

21           (2) expand interagency procedures to collect  
22      and organize data, including significant research and  
23      resource information on the needs and treatment of  
24      unaccompanied alien children in the custody of the  
25      United States Government.

1   **SEC. 1213. TRANSITION PROVISIONS.**

2           (a) **TRANSFER OF FUNCTIONS.**—All functions with  
3   respect to the care and custody of unaccompanied alien  
4   children under the immigration laws of the United States  
5   vested by statute in, or exercised by, the Commissioner  
6   of Immigration and Naturalization (or any officer, em-  
7   ployee, or component thereof), immediately prior to the  
8   effective date of this subtitle, are transferred to the Office.

9           (b) **TRANSFER AND ALLOCATIONS OF APPROPRIA-**  
10   **TIONS AND PERSONNEL.**—The personnel employed in con-  
11   nection with, and the assets, liabilities, contracts, prop-  
12   erty, records, and unexpended balances of appropriations,  
13   authorizations, allocations, and other funds employed,  
14   used, held, arising from, available to, or to be made avail-  
15   able in connection with the functions transferred by this  
16   section, subject to section 1531 of title 31, United States  
17   Code, shall be transferred to the Office. Unexpended funds  
18   transferred pursuant to this section shall be used only for  
19   the purposes for which the funds were originally author-  
20   ized and appropriated.

21           (c) **LEGAL DOCUMENTS.**—All orders, determinations,  
22   rules, regulations, permits, grants, loans, contracts, rec-  
23   ognition of labor organizations, agreements, including col-  
24   lective bargaining agreements, certificates, licenses, and  
25   privileges—

1           (1) that have been issued, made, granted, or al-  
2       lowed to become effective by the President, the At-  
3       torney General, the Commissioner of the Immigra-  
4       tion and Naturalization Service, their delegates, or  
5       any other Government official, or by a court of com-  
6       petent jurisdiction, in the performance of any func-  
7       tion that is transferred pursuant to this section; and

8           (2) that are in effect on the effective date of  
9       such transfer (or become effective after such date  
10      pursuant to their terms as in effect on such effective  
11      date);

12 shall continue in effect according to their terms until  
13 modified, terminated, superseded, set aside, or revoked in  
14 accordance with law by the President, any other author-  
15 ized official, a court of competent jurisdiction, or operation  
16 of law, except that any collective bargaining agreement  
17 shall remain in effect until the date of termination speci-  
18 fied in the agreement.

19       (d) PROCEEDINGS.—

20           (1) PENDING.—The transfer of functions under  
21       subsection (a) shall not affect any proceeding or any  
22       application for any benefit, service, license, permit,  
23       certificate, or financial assistance pending on the ef-  
24       fective date of this subtitle before an office whose  
25       functions are transferred pursuant to this section,

1 but such proceedings and applications shall be con-  
2 tinued.

3 (2) ORDERS.—Orders shall be issued in such  
4 proceedings, appeals shall be taken therefrom, and  
5 payments shall be made pursuant to such orders, as  
6 if this Act had not been enacted, and orders issued  
7 in any such proceeding shall continue in effect until  
8 modified, terminated, superseded, or revoked by a  
9 duly authorized official, by a court of competent ju-  
10 risdiction, or by operation of law.

11 (3) DISCONTINUANCE OR MODIFICATION.—  
12 Nothing in this section shall be considered to pro-  
13 hibit the discontinuance or modification of any such  
14 proceeding under the same terms and conditions and  
15 to the same extent that such proceeding could have  
16 been discontinued or modified if this section had not  
17 been enacted.

18 (e) SUITS.—This section shall not affect suits com-  
19 menced before the effective date of this subtitle, and in  
20 all such suits, proceeding shall be had, appeals taken, and  
21 judgments rendered in the same manner and with the  
22 same effect as if this section had not been enacted.

23 (f) NONABATEMENT OF ACTIONS.—No suit, action,  
24 or other proceeding commenced by or against the Depart-  
25 ment of Justice or the Immigration and Naturalization



1 Service, or by or against any individual in the official ca-  
2 pacity of such individual as an officer or employee in con-  
3 nection with a function transferred under this section,  
4 shall abate by reason of the enactment of this Act.

5 (g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF  
6 PARTIES.—If any Government officer in the official capac-  
7 ity of such officer is party to a suit with respect to a func-  
8 tion of the officer, and pursuant to this section such func-  
9 tion is transferred to any other officer or office, then such  
10 suit shall be continued with the other officer or the head  
11 of such other office, as applicable, substituted or added  
12 as a party.

13 (h) ADMINISTRATIVE PROCEDURE AND JUDICIAL  
14 REVIEW.—Except as otherwise provided by this title, any  
15 statutory requirements relating to notice, hearings, action  
16 upon the record, or administrative or judicial review that  
17 apply to any function transferred pursuant to any provi-  
18 sion of this section shall apply to the exercise of such func-  
19 tion by the head of the office, and other officers of the  
20 office, to which such function is transferred pursuant to  
21 such provision.

22 **SEC. 1214. EFFECTIVE DATE.**

23 This subtitle shall take effect one year after the effec-  
24 tive date of division A of this Act.

1 **Subtitle B—Custody, Release, Fam-**  
2 **ily Reunification, and Detention**

3 **SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOM-**  
4 **PANIED ALIEN CHILDREN.**

5 (a) UNACCOMPANIED CHILDREN FOUND ALONG THE  
6 UNITED STATES BORDER OR AT UNITED STATES PORTS  
7 OF ENTRY.—

8 (1) IN GENERAL.—Subject to paragraph (2), if  
9 an immigration officer finds an unaccompanied alien  
10 child who is described in paragraph (2) at a land  
11 border or port of entry of the United States and de-  
12 termines that such child is inadmissible under the  
13 Immigration and Nationality Act, the officer shall—

14 (A) permit such child to withdraw the  
15 child's application for admission pursuant to  
16 section 235(a)(4) of the Immigration and Na-  
17 tionality Act; and

18 (B) remove such child from the United  
19 States.

20 (2) SPECIAL RULE FOR CONTIGUOUS COUN-  
21 TRIES.—

22 (A) IN GENERAL.—Any child who is a na-  
23 tional or habitual resident of a country that is  
24 contiguous with the United States and that has  
25 an agreement in writing with the United States

1 providing for the safe return and orderly repa-  
2 triation of unaccompanied alien children who  
3 are nationals or habitual residents of such  
4 country shall be treated in accordance with  
5 paragraph (1), unless a determination is made  
6 on a case-by-case basis that—

7 (i) such child has a fear of returning  
8 to the child's country of nationality or  
9 country of last habitual residence owing to  
10 a fear of persecution;

11 (ii) the return of such child to the  
12 child's country of nationality or country of  
13 last habitual residence would endanger the  
14 life or safety of such child; or

15 (iii) the child cannot make an inde-  
16 pendent decision to withdraw the child's  
17 application for admission due to age or  
18 other lack of capacity.

19 (B) RIGHT OF CONSULTATION.—Any child  
20 described in subparagraph (A) shall have the  
21 right to consult with a consular officer from the  
22 child's country of nationality or country of last  
23 habitual residence prior to repatriation, as well  
24 as consult with the Office, telephonically, and  
25 such child shall be informed of that right.

1           (3) RULE FOR APPREHENSIONS AT THE BOR-  
2       DER.—The custody of unaccompanied alien children  
3       not described in paragraph (2) who are apprehended  
4       at the border of the United States or at a United  
5       States port of entry shall be treated in accordance  
6       with the provisions of subsection (b).

7       (b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN  
8       FOUND IN THE INTERIOR OF THE UNITED STATES.—

9           (1) ESTABLISHMENT OF JURISDICTION.—

10           (A) IN GENERAL.—Except as otherwise  
11       provided under subsection (a) and subpara-  
12       graphs (B) and (C), the custody of all unaccom-  
13       panied alien children, including responsibility  
14       for their detention, where appropriate, shall be  
15       under the jurisdiction of the Office.

16           (B) EXCEPTION FOR CHILDREN WHO HAVE  
17       COMMITTED CRIMES.—Notwithstanding sub-  
18       paragraph (A), the Service shall retain or as-  
19       sume the custody and care of any unaccom-  
20       panied alien child who—

21           (i) has been charged with any felony,  
22       excluding offenses proscribed by the Immi-  
23       gration and Nationality Act, while such  
24       charges are pending; or

1 (ii) has been convicted of any such fel-  
2 ony.

3 (C) EXCEPTION FOR CHILDREN WHO  
4 THREATEN NATIONAL SECURITY.—Notwith-  
5 standing subparagraph (A), the Service shall  
6 retain or assume the custody and care of an un-  
7 accompanied alien child if the Secretary of  
8 Homeland Security has substantial evidence  
9 that such child endangers the national security  
10 of the United States.

11 (2) NOTIFICATION.—Upon apprehension of an  
12 unaccompanied alien child, the Secretary shall  
13 promptly notify the Office.

14 (3) TRANSFER OF UNACCOMPANIED ALIEN  
15 CHILDREN.—

16 (A) TRANSFER TO THE OFFICE.—The care  
17 and custody of an unaccompanied alien child  
18 shall be transferred to the Office—

19 (i) in the case of a child not described  
20 in paragraph (1) (B) or (C), not later than  
21 72 hours after the apprehension of such  
22 child; or

23 (ii) in the case of a child whose cus-  
24 tody has been retained or assumed by the  
25 Service pursuant to paragraph (1) (B) or

1 (C), immediately following a determination  
2 that the child no longer meets the descrip-  
3 tion set forth in such paragraph.

4 (B) TRANSFER TO THE SERVICE.—Upon  
5 determining that a child in the custody of the  
6 Office is described in paragraph (1) (B) or (C),  
7 the Director shall promptly make arrangements  
8 to transfer the care and custody of such child  
9 to the Service.

10 (c) AGE DETERMINATIONS.—In any case in which  
11 the age of an alien is in question and the resolution of  
12 questions about such alien's age would affect the alien's  
13 eligibility for treatment under the provisions of this title,  
14 a determination of whether such alien meets the age re-  
15 quirements of this title shall be made in accordance with  
16 the provisions of section 1225.

17 **SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED**  
18 **ALIEN CHILDREN WITH RELATIVES IN THE**  
19 **UNITED STATES.**

20 (a) PLACEMENT AUTHORITY.—

21 (1) ORDER OF PREFERENCE.—Subject to the  
22 Director's discretion under paragraph (4) and sec-  
23 tion 1223(a)(2), an unaccompanied alien child in the  
24 custody of the Office shall be promptly placed with

1       one of the following individuals in the following  
2       order of preference:

3               (A) A parent who seeks to establish cus-  
4               tody, as described in paragraph (3)(A).

5               (B) A legal guardian who seeks to estab-  
6               lish custody, as described in paragraph (3)(A).

7               (C) An adult relative.

8               (D) An entity designated by the parent or  
9               legal guardian that is capable and willing to  
10              care for the child's well-being.

11              (E) A State-licensed juvenile shelter, group  
12              home, or foster home willing to accept legal cus-  
13              tody of the child.

14              (F) A qualified adult or entity seeking cus-  
15              tody of the child when it appears that there is  
16              no other likely alternative to long-term deten-  
17              tion and family reunification does not appear to  
18              be a reasonable alternative. For purposes of  
19              this subparagraph, the qualification of the adult  
20              or entity shall be decided by the Office.

21              (2) HOME STUDY.—Notwithstanding the provi-  
22              sions of paragraph (1), no unaccompanied alien child  
23              shall be placed with a person or entity unless a valid  
24              home-study conducted by an agency of the State of  
25              the child's proposed residence, by an agency author-

1        ized by that State to conduct such a study, or by an  
2        appropriate voluntary agency contracted with the  
3        Office to conduct such studies has found that the  
4        person or entity is capable of providing for the  
5        child's physical and mental well-being.

6                (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO  
7        CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

8                (A) PLACEMENT WITH PARENT OR LEGAL  
9        GUARDIAN.—If an unaccompanied alien child is  
10       placed with any person or entity other than a  
11       parent or legal guardian, but subsequent to  
12       that placement a parent or legal guardian seeks  
13       to establish custody, the Director shall assess  
14       the suitability of placing the child with the par-  
15       ent or legal guardian and shall make a written  
16       determination on the child's placement within  
17       30 days.

18                (B) RULE OF CONSTRUCTION.—Nothing in  
19       this title shall be construed to—

20                (i) supersede obligations under any  
21       treaty or other international agreement to  
22       which the United States is a party, includ-  
23       ing The Hague Convention on the Civil As-  
24       pects of International Child Abduction, the  
25       Vienna Declaration and Programme of Ac-



1                   tion, and the Declaration of the Rights of  
2                   the Child; or

3                   (ii) limit any right or remedy under  
4                   such international agreement.

5                   (4) PROTECTION FROM SMUGGLERS AND TRAF-  
6                   FICKERS.—The Director shall take affirmative steps  
7                   to ensure that unaccompanied alien children are pro-  
8                   tected from smugglers, traffickers, or others seeking  
9                   to victimize or otherwise engage such children in  
10                  criminal, harmful, or exploitative activity. Attorneys  
11                  involved in such activities should be reported to their  
12                  State bar associations for disciplinary action.

13                  (5) GRANTS AND CONTRACTS.—Subject to the  
14                  availability of appropriations, the Director is author-  
15                  ized to make grants to, and enter into contracts  
16                  with, voluntary agencies to carry out the provisions  
17                  of this section.

18                  (6) REIMBURSEMENT OF STATE EXPENSES.—  
19                  Subject to the availability of appropriations, the Di-  
20                  rector is authorized to reimburse States for any ex-  
21                  penses they incur in providing assistance to unac-  
22                  companied alien children who are served pursuant to  
23                  this title.

24                  (b) CONFIDENTIALITY.—All information obtained by  
25                  the Office relating to the immigration status of a person

1 listed in subsection (a) shall remain confidential and may  
2 be used only for the purposes of determining such person's  
3 qualifications under subsection (a)(1).

4 **SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF**  
5 **UNACCOMPANIED ALIEN CHILDREN.**

6 (a) STANDARDS FOR PLACEMENT.—

7 (1) PROHIBITION OF DETENTION IN CERTAIN  
8 FACILITIES.—Except as provided in paragraph (2),  
9 an unaccompanied alien child shall not be placed in  
10 an adult detention facility or a facility housing delin-  
11 quent children.

12 (2) DETENTION IN APPROPRIATE FACILITIES.—  
13 An unaccompanied alien child who has exhibited a  
14 violent or criminal behavior that endangers others  
15 may be detained in conditions appropriate to the be-  
16 havior in a facility appropriate for delinquent chil-  
17 dren.

18 (3) STATE LICENSURE.—In the case of a place-  
19 ment of a child with an entity described in section  
20 1222(a)(1)(E), the entity must be licensed by an ap-  
21 propriate State agency to provide residential, group,  
22 child welfare, or foster care services for dependent  
23 children.

24 (4) CONDITIONS OF DETENTION.—

1 (A) IN GENERAL.—The Director shall pro-  
2 mulgate regulations incorporating standards for  
3 conditions of detention in such placements that  
4 provide for—

5 (i) educational services appropriate to  
6 the child;

7 (ii) medical care;

8 (iii) mental health care, including  
9 treatment of trauma;

10 (iv) access to telephones;

11 (v) access to legal services;

12 (vi) access to interpreters;

13 (vii) supervision by professionals  
14 trained in the care of children, taking into  
15 account the special cultural, linguistic, and  
16 experiential needs of children in immigra-  
17 tion proceedings;

18 (viii) recreational programs and activi-  
19 ties;

20 (ix) spiritual and religious needs; and

21 (x) dietary needs.

22 (B) NOTIFICATION OF CHILDREN.—Such  
23 regulations shall provide that all children are  
24 notified orally and in writing of such standards.

1 (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-  
2 rector and the Secretary of Homeland Security shall de-  
3 velop procedures prohibiting the unreasonable use of—

4 (1) shackling, handcuffing, or other restraints  
5 on children;

6 (2) solitary confinement; or

7 (3) pat or strip searches.

8 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
9 tion shall be construed to supersede procedures favoring  
10 release of children to appropriate adults or entities or  
11 placement in the least secure setting possible, as defined  
12 in the Stipulated Settlement Agreement under Flores v.  
13 Reno.

14 **SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHIL-**  
15 **DREN.**

16 (a) COUNTRY CONDITIONS.—

17 (1) SENSE OF CONGRESS.—It is the sense of  
18 Congress that, to the extent consistent with the trea-  
19 ties and other international agreements to which the  
20 United States is a party and to the extent prac-  
21 ticable, the United States Government should under-  
22 take efforts to ensure that it does not repatriate  
23 children in its custody into settings that would  
24 threaten the life and safety of such children.

25 (2) ASSESSMENT OF CONDITIONS.—

1           (A) IN GENERAL.—In carrying out repatri-  
2           ations of unaccompanied alien children, the Of-  
3           fice shall conduct assessments of country condi-  
4           tions to determine the extent to which the coun-  
5           try to which a child is being repatriated has a  
6           child welfare system capable of ensuring the  
7           child's well being.

8           (B) FACTORS FOR ASSESSMENT.—In as-  
9           sessing country conditions, the Office shall, to  
10          the maximum extent practicable, examine the  
11          conditions specific to the locale of the child's re-  
12          patriation.

13       (b) REPORT ON REPATRIATION OF UNACCOMPANIED  
14       ALIEN CHILDREN.—Beginning not later than 18 months  
15       after the date of enactment of this Act, and annually  
16       thereafter, the Director shall submit a report to the Judi-  
17       ciary Committees of the House of Representatives and  
18       Senate on the Director's efforts to repatriate unaccom-  
19       panied alien children. Such report shall include at a min-  
20       imum the following information:

21           (1) The number of unaccompanied alien chil-  
22           dren ordered removed and the number of such chil-  
23           dren actually removed from the United States.

24           (2) A description of the type of immigration re-  
25           lief sought and denied to such children.

1           (3) A statement of the nationalities, ages, and  
2           gender of such children.

3           (4) A description of the procedures used to ef-  
4           fect the removal of such children from the United  
5           States.

6           (5) A description of steps taken to ensure that  
7           such children were safely and humanely repatriated  
8           to their country of origin.

9           (6) Any information gathered in assessments of  
10          country and local conditions pursuant to subsection  
11          (a)(2).

12 **SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOM-**  
13 **PANIED ALIEN CHILD.**

14          The Director shall develop procedures that permit the  
15          presentation and consideration of a variety of forms of evi-  
16          dence, including testimony of a child and other persons,  
17          to determine an unaccompanied alien child's age for pur-  
18          poses of placement, custody, parole, and detention. Such  
19          procedures shall allow the appeal of a determination to  
20          an immigration judge. Radiographs shall not be the sole  
21          means of determining age.

22 **SEC. 1226. EFFECTIVE DATE.**

23          This subtitle shall take effect one year after the effec-  
24          tive date of division A of this Act.

1 **Subtitle C—Access by Unaccom-**  
2 **panied Alien Children to Guard-**  
3 **ians Ad Litem and Counsel**

4 **SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN**  
5 **TO GUARDIANS AD LITEM.**

6 (a) GUARDIAN AD LITEM.—

7 (1) APPOINTMENT.—The Director shall appoint  
8 a guardian ad litem who meets the qualifications de-  
9 scribed in paragraph (2) for each unaccompanied  
10 alien child in the custody of the Office not later than  
11 72 hours after the Office assumes physical or con-  
12 structive custody of such child. The Director is en-  
13 couraged, wherever practicable, to contract with a  
14 voluntary agency for the selection of an individual to  
15 be appointed as a guardian ad litem under this para-  
16 graph.

17 (2) QUALIFICATIONS OF GUARDIAN AD  
18 LITEM.—

19 (A) IN GENERAL.—No person shall serve  
20 as a guardian ad litem unless such person—

21 (i) is a child welfare professional or  
22 other individual who has received training  
23 in child welfare matters; and

1 (ii) possesses special training on the  
2 nature of problems encountered by unac-  
3 companied alien children.

4 (B) PROHIBITION.—A guardian ad litem  
5 shall not be an employee of the Service.

6 (3) DUTIES.—The guardian ad litem shall—

7 (A) conduct interviews with the child in a  
8 manner that is appropriate, taking into account  
9 the child's age;

10 (B) investigate the facts and circumstances  
11 relevant to such child's presence in the United  
12 States, including facts and circumstances aris-  
13 ing in the country of the child's nationality or  
14 last habitual residence and facts and cir-  
15 cumstances arising subsequent to the child's de-  
16 parture from such country;

17 (C) work with counsel to identify the  
18 child's eligibility for relief from removal or vol-  
19 untary departure by sharing with counsel infor-  
20 mation collected under subparagraph (B);

21 (D) develop recommendations on issues  
22 relative to the child's custody, detention, re-  
23 lease, and repatriation;

24 (E) ensure that the child's best interests  
25 are promoted while the child participates in, or



1 is subject to, proceedings or actions under the  
2 Immigration and Nationality Act;

3 (F) ensure that the child understands such  
4 determinations and proceedings; and

5 (G) report findings and recommendations  
6 to the Director and to the Executive Office of  
7 Immigration Review (or successor entity).

8 (4) TERMINATION OF APPOINTMENT.—The  
9 guardian ad litem shall carry out the duties de-  
10 scribed in paragraph (3) until—

11 (A) those duties are completed,

12 (B) the child departs the United States,

13 (C) the child is granted permanent resi-  
14 dent status in the United States,

15 (D) the child attains the age of 18, or

16 (E) the child is placed in the custody of a  
17 parent or legal guardian,

18 whichever occurs first.

19 (5) POWERS.—The guardian ad litem—

20 (A) shall have reasonable access to the  
21 child, including access while such child is being  
22 held in detention or in the care of a foster fam-  
23 ily;

1 (B) shall be permitted to review all records  
2 and information relating to such proceedings  
3 that are not deemed privileged or classified;

4 (C) may seek independent evaluations of  
5 the child;

6 (D) shall be notified in advance of all hear-  
7 ings involving the child that are held in connec-  
8 tion with proceedings under the Immigration  
9 and Nationality Act, and shall be given a rea-  
10 sonable opportunity to be present at such hear-  
11 ings; and

12 (E) shall be permitted to consult with the  
13 child during any hearing or interview involving  
14 such child.

15 (b) TRAINING.—The Director shall provide profes-  
16 sional training for all persons serving as guardians ad  
17 litem under this section in the circumstances and condi-  
18 tions that unaccompanied alien children face as well as  
19 in the various immigration benefits for which such a child  
20 might be eligible.

21 **SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN**  
22 **TO COUNSEL.**

23 (a) ACCESS TO COUNSEL.—

24 (1) IN GENERAL.—The Director shall ensure  
25 that all unaccompanied alien children in the custody

1 of the Office or in the custody of the Service who  
2 are not described in section 1221(a)(2) shall have  
3 competent counsel to represent them in immigration  
4 proceedings or matters.

5 (2) PRO BONO REPRESENTATION.—To the max-  
6 imum extent practicable, the Director shall utilize  
7 the services of pro bono attorneys who agree to pro-  
8 vide representation to such children without charge.

9 (3) GOVERNMENT FUNDED REPRESENTA-  
10 TION.—

11 (A) APPOINTMENT OF COMPETENT COUN-  
12 SEL.—Notwithstanding section 292 of the Im-  
13 migration and Nationality Act (8 U.S.C. 1362)  
14 or any other provision of law, when no com-  
15 petent counsel is available to represent an unac-  
16 companied alien child without charge, the Di-  
17 rector shall appoint competent counsel for such  
18 child at the expense of the Government.

19 (B) LIMITATION ON ATTORNEY FEES.—  
20 Counsel appointed under subparagraph (A) may  
21 not be compensated at a rate in excess of the  
22 rate provided under section 3006A of title 18,  
23 United States Code.

24 (C) ASSUMPTION OF THE COST OF GOV-  
25 ERNMENT-PAID COUNSEL.—In the case of a

1 child for whom counsel is appointed under sub-  
2 paragraph (A) who is subsequently placed in  
3 the physical custody of a parent or legal guard-  
4 ian, such parent or legal guardian may elect to  
5 retain the same counsel to continue representa-  
6 tion of the child, at no expense to the Govern-  
7 ment, beginning on the date that the parent or  
8 legal guardian assumes physical custody of the  
9 child.

10 (4) DEVELOPMENT OF NECESSARY INFRA-  
11 STRUCTURES AND SYSTEMS.—In ensuring that legal  
12 representation is provided to such children, the Di-  
13 rector shall develop the necessary mechanisms to  
14 identify entities available to provide such legal as-  
15 sistance and representation and to recruit such enti-  
16 ties.

17 (5) CONTRACTING AND GRANT MAKING AU-  
18 THORITY.—

19 (A) IN GENERAL.—Subject to the avail-  
20 ability of appropriations, the Director shall  
21 enter into contracts with or make grants to na-  
22 tional nonprofit agencies with relevant expertise  
23 in the delivery of immigration-related legal serv-  
24 ices to children in order to carry out this sub-  
25 section.

1 (B) INELIGIBILITY FOR GRANTS AND CON-  
2 TRACTS.—In making grants and entering into  
3 contracts with such agencies, the Director shall  
4 ensure that no such agency is—

5 (i) a grantee or contractee for services  
6 provided under section 1222 or 1231; and

7 (ii) simultaneously a grantee or con-  
8 tractee for services provided under sub-  
9 paragraph (A).

10 (b) REQUIREMENT OF LEGAL REPRESENTATION.—  
11 The Director shall ensure that all unaccompanied alien  
12 children have legal representation within 7 days of the  
13 child coming into Federal custody.

14 (c) DUTIES.—Counsel shall represent the unaccom-  
15 panied alien child all proceedings and actions relating to  
16 the child's immigration status or other actions involving  
17 the Service and appear in person for all individual merits  
18 hearings before the Executive Office for Immigration Re-  
19 view (or its successor entity) and interviews involving the  
20 Service.

21 (d) ACCESS TO CHILD.—

22 (1) IN GENERAL.—Counsel shall have reason-  
23 able access to the unaccompanied alien child, includ-  
24 ing access while the child is being held in detention,

1 in the care of a foster family, or in any other setting  
2 that has been determined by the Office.

3 (2) RESTRICTION ON TRANSFERS.—Absent  
4 compelling and unusual circumstances, no child who  
5 is represented by counsel shall be transferred from  
6 the child's placement to another placement unless  
7 advance notice of at least 24 hours is made to coun-  
8 sel of such transfer.

9 (e) TERMINATION OF APPOINTMENT.—Counsel shall  
10 carry out the duties described in subsection (c) until—

11 (1) those duties are completed,

12 (2) the child departs the United States,

13 (3) the child is granted withholding of removal  
14 under section 241(b)(3) of the Immigration and Na-  
15 tionality Act,

16 (4) the child is granted protection under the  
17 Convention Against Torture,

18 (5) the child is granted asylum in the United  
19 States under section 208 of the Immigration and  
20 Nationality Act,

21 (6) the child is granted permanent resident sta-  
22 tus in the United States, or

23 (7) the child attains 18 years of age,  
24 whichever occurs first.

1 (f) NOTICE TO COUNSEL DURING IMMIGRATION PRO-  
2 CEEDINGS.—

3 (1) IN GENERAL.—Except when otherwise re-  
4 quired in an emergency situation involving the phys-  
5 ical safety of the child, counsel shall be given prompt  
6 and adequate notice of all immigration matters af-  
7 fecting or involving an unaccompanied alien child,  
8 including adjudications, proceedings, and processing,  
9 before such actions are taken.

10 (2) OPPORTUNITY TO CONSULT WITH COUN-  
11 SEL.—An unaccompanied alien child in the custody  
12 of the Office may not give consent to any immigra-  
13 tion action, including consenting to voluntary depar-  
14 ture, unless first afforded an opportunity to consult  
15 with counsel.

16 (g) ACCESS TO RECOMMENDATIONS OF GUARDIAN  
17 AD LITEM.—Counsel shall be afforded an opportunity to  
18 review the recommendation by the guardian ad litem af-  
19 fecting or involving a client who is an unaccompanied alien  
20 child.

21 **SEC. 1233. EFFECTIVE DATE; APPLICABILITY.**

22 (a) EFFECTIVE DATE.—This subtitle shall take effect  
23 one year after the effective date of division A of this Act.

24 (b) APPLICABILITY.—The provisions of this subtitle  
25 shall apply to all unaccompanied alien children in Federal

1 custody on, before, or after the effective date of this sub-  
2 title.

3 **Subtitle D—Strengthening Policies**  
4 **for Permanent Protection of**  
5 **Alien Children**

6 **SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.**

7 (a) J VISA.—Section 101(a)(27)(J) (8 U.S.C.  
8 1101(a)(27)(J)) is amended to read as follows:

9 “(J) an immigrant under the age of 18 on the  
10 date of application who is present in the United  
11 States—

12 “(i) who has been declared dependent on a  
13 juvenile court located in the United States or  
14 whom such a court has legally committed to, or  
15 placed under the custody of, a department or  
16 agency of a State, or an individual or entity ap-  
17 pointed by a State, and who has been deemed  
18 eligible by that court for long-term foster care  
19 due to abuse, neglect, or abandonment, or a  
20 similar basis found under State law;

21 “(ii) for whom it has been determined in  
22 administrative or judicial proceedings that it  
23 would not be in the alien’s best interest to be  
24 returned to the alien’s or parent’s previous



1 country of nationality or country of last habit-  
2 ual residence; and

3 “(iii) for whom the Office of Refugee Re-  
4 settlement of the Department of Health and  
5 Human Services has certified to the Under Sec-  
6 retary of Homeland Security for Immigration  
7 Affairs that the classification of an alien as a  
8 special immigrant under this subparagraph has  
9 not been made solely to provide an immigration  
10 benefit to that alien;

11 except that no natural parent or prior adoptive par-  
12 ent of any alien provided special immigrant status  
13 under this subparagraph shall thereafter, by virtue  
14 of such parentage, be accorded any right, privilege,  
15 or status under this Act;”.

16 (b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8  
17 U.S.C. 1255(h)(2)) is amended—

18 (1) by amending subparagraph (A) to read as  
19 follows:

20 “(A) paragraphs (1), (4), (5), (6), and  
21 (7)(A) of section 212(a) shall not apply,”;

22 (2) in subparagraph (B), by striking the period  
23 and inserting “, and”; and

24 (3) by adding at the end the following new sub-  
25 paragraph:

1           “(C) the Secretary of Homeland Security  
2           may waive paragraph (2) (A) and (B) in the  
3           case of an offense which arose as a consequence  
4           of the child being unaccompanied.”.

5           (c) ELIGIBILITY FOR ASSISTANCE.—A child who has  
6           been granted relief under section 101(a)(27)(J) of the Im-  
7           migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),  
8           as amended by subsection (a), and who is in the custody  
9           of a State shall be eligible for all funds made available  
10          under section 412(d) of such Act.

11   **SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRI-**  
12                           **VATE PARTIES WHO COME INTO CONTACT**  
13                           **WITH UNACCOMPANIED ALIEN CHILDREN.**

14          (a) TRAINING OF STATE AND LOCAL OFFICIALS AND  
15          CERTAIN PRIVATE PARTIES.—The Secretary of Health  
16          and Human Services, acting jointly with the Secretary,  
17          shall provide appropriate training to be available to State  
18          and county officials, child welfare specialists, teachers,  
19          public counsel, and juvenile judges who come into contact  
20          with unaccompanied alien children. The training shall pro-  
21          vide education on the processes pertaining to unaccom-  
22          panied alien children with pending immigration status and  
23          on the forms of relief potentially available. The Director  
24          shall be responsible for establishing a core curriculum that  
25          can be incorporated into currently existing education,

1 training, or orientation modules or formats that are cur-  
2 rently used by these professionals.

3 (b) TRAINING OF SERVICE PERSONNEL.—The Sec-  
4 retary, acting jointly with the Secretary of Health and  
5 Human Services, shall provide specialized training to all  
6 personnel of the Service who come into contact with unac-  
7 companied alien children. In the case of Border Patrol  
8 agents and immigration inspectors, such training shall in-  
9 clude specific training on identifying children at the  
10 United States border or at United States ports of entry  
11 who have been victimized by smugglers or traffickers, and  
12 children for whom asylum or special immigrant relief may  
13 be appropriate, including children described in section  
14 1221(a)(2).

15 **SEC. 1243. EFFECTIVE DATE.**

16 The amendment made by section 1241 shall apply to  
17 all eligible children who were in the United States before,  
18 on, or after the date of enactment of this Act.

19 **Subtitle E—Children Refugee and**  
20 **Asylum Seekers**

21 **SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

22 (a) SENSE OF CONGRESS.—Congress commends the  
23 Service for its issuance of its “Guidelines for Children’s  
24 Asylum Claims”, dated December 1998, and encourages  
25 and supports the Service’s implementation of such guide-

1 lines in an effort to facilitate the handling of children's  
2 asylum claims. Congress calls upon the Executive Office  
3 for Immigration Review of the Department of Justice (or  
4 successor entity) to adopt the "Guidelines for Children's  
5 Asylum Claims" in its handling of children's asylum  
6 claims before immigration judges and the Board of Immi-  
7 gration Appeals.

8 (b) TRAINING.—The Secretary of Homeland Security  
9 shall provide periodic comprehensive training under the  
10 "Guidelines for Children's Asylum Claims" to asylum offi-  
11 cers, immigration judges, members of the Board of Immi-  
12 gration Appeals, and immigration officers who have con-  
13 tact with children in order to familiarize and sensitize such  
14 officers to the needs of children asylum seekers. Voluntary  
15 agencies shall be allowed to assist in such training.

16 **SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.**

17 (a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-  
18 DREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

19 (1) by redesignating paragraphs (3), (4), (5),  
20 (6), and (7) as paragraphs (4), (5), (6), (7), and  
21 (8), respectively; and

22 (2) by inserting after paragraph (2) the fol-  
23 lowing new paragraph:

1           “(3) An analysis of the worldwide situation  
2           faced by unaccompanied refugee children, by region.  
3           Such analysis shall include an assessment of—

4                   “(A) the number of unaccompanied refugee  
5           children, by region;

6                   “(B) the capacity of the Department of  
7           State to identify such refugees;

8                   “(C) the capacity of the international com-  
9           munity to care for and protect such refugees;

10                  “(D) the capacity of the voluntary agency  
11           community to resettle such refugees in the  
12           United States;

13                  “(E) the degree to which the United States  
14           plans to resettle such refugees in the United  
15           States in the coming fiscal year; and

16                  “(F) the fate that will befall such unac-  
17           companied refugee children for whom resettlement  
18           in the United States is not possible.”.

19           (b) TRAINING ON THE NEEDS OF UNACCOMPANIED  
20   REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C.  
21   1157(f)(2)) is amended by—

22                   (1) striking “and” after “countries,”; and

23                   (2) inserting before the period at the end the  
24           following: “, and instruction on the needs of unac-  
25           companied refugee children”.

1           **Subtitle F—Authorization of**  
2                           **Appropriations**

3   **SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.**

4           (a) IN GENERAL.—There are authorized to be appro-  
5   priated such sums as may be necessary to carry out the  
6   provisions of this title.

7           (b) AVAILABILITY OF FUNDS.—Amounts appro-  
8   priated pursuant to subsection (a) are authorized to re-  
9   main available until expended.

10   **TITLE XIII—AGENCY FOR IMMI-**  
11           **GRATION HEARINGS AND AP-**  
12           **PEALS**

13   **Subtitle A—Structure and Function**

14   **SEC. 1301. ESTABLISHMENT.**

15           (a) IN GENERAL.—There is established within the  
16   Department of Justice the Agency for Immigration Hear-  
17   ings and Appeals (in this title referred to as the “Agen-  
18   cy”).

19           (b) ABOLITION OF EOIR.—The Executive Office for  
20   Immigration Review of the Department of Justice is here-  
21   by abolished.

22   **SEC. 1302. DIRECTOR OF THE AGENCY.**

23           (a) APPOINTMENT.—There shall be at the head of the  
24   Agency a Director who shall be appointed by the Presi-  
25   dent, by and with the advice and consent of the Senate.

1 (b) OFFICES.—The Director shall appoint a Deputy  
2 Director, General Counsel, Pro Bono Coordinator, and  
3 other offices as may be necessary to carry out this title.

4 (c) RESPONSIBILITIES.—The Director shall—

5 (1) administer the Agency and be responsible  
6 for the promulgation of rules and regulations affect-  
7 ing the Agency;

8 (2) appoint each Member of the Board of Immi-  
9 gration Appeals, including a Chair;

10 (3) appoint the Chief Immigration Judge; and

11 (4) appoint and fix the compensation of attor-  
12 neys, clerks, administrative assistants, and other  
13 personnel as may be necessary.

14 **SEC. 1303. BOARD OF IMMIGRATION APPEALS.**

15 (a) IN GENERAL.—The Board of Immigration Ap-  
16 peals (in this title referred to as the “Board”) shall per-  
17 form the appellate functions of the Agency. The Board  
18 shall consist of a Chair and not less than 14 other immi-  
19 gration appeals judges.

20 (b) APPOINTMENT.—Members of the Board shall be  
21 appointed by the Director, in consultation with the Chair  
22 of the Board of Immigration Appeals.

23 (c) QUALIFICATIONS.—The Chair and each other  
24 Member of the Board shall be an attorney in good stand-  
25 ing of a bar of a State or the District of Columbia and

1 shall have at least 7 years of professional legal expertise  
2 in immigration and nationality law.

3 (d) CHAIR.—The Chair shall direct, supervise, and  
4 establish the procedures and policies of the Board.

5 (e) JURISDICTION.—

6 (1) IN GENERAL.—The Board shall have such  
7 jurisdiction as was, prior to the date of enactment  
8 of this Act, provided by statute or regulation to the  
9 Board of Immigration Appeals (as in effect under  
10 the Executive Office of Immigration Review).

11 (2) DE NOVO REVIEW.—The Board shall have  
12 de novo review of any decision by an immigration  
13 judge, including any final order of removal.

14 (f) DECISIONS OF THE BOARD.—The decisions of the  
15 Board shall constitute final agency action, subject to re-  
16 view only as provided by the Immigration and Nationality  
17 Act and other applicable law.

18 (g) INDEPENDENCE OF BOARD MEMBERS.—The  
19 Members of the Board shall exercise their independent  
20 judgment and discretion in the cases coming before the  
21 Board.

22 **SEC. 1304. CHIEF IMMIGRATION JUDGE.**

23 (a) ESTABLISHMENT OF OFFICE.—There shall be  
24 within the Agency the position of Chief Immigration  
25 Judge, who shall administer the immigration courts.



1 (b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—

2 The Chief Immigration Judge shall be responsible for the  
3 general supervision, direction, and procurement of re-  
4 source and facilities and for the general management of  
5 immigration court dockets.

6 (c) APPOINTMENT OF IMMIGRATION JUDGES.—Im-

7 migration judges shall be appointed by the Director, in  
8 consultation with the Chief Immigration Judge.

9 (d) QUALIFICATIONS.—Each immigration judge, in-  
10 cluding the Chief Immigration Judge, shall be an attorney  
11 in good standing of a bar of a State or the District of  
12 Columbia and shall have at least 7 years of professional  
13 legal expertise in immigration and nationality law.

14 (e) JURISDICTION AND AUTHORITY OF IMMIGRATION

15 COURTS.—The immigration courts shall have such juris-  
16 diction as was, prior to the date of enactment of this Act,  
17 provided by statute or regulation to the immigration  
18 courts within the Executive Office for Immigration Review  
19 of the Department of Justice.

20 (f) INDEPENDENCE OF IMMIGRATION JUDGES.—The

21 immigration judges shall exercise their independent judg-  
22 ment and discretion in the cases coming before the Immi-  
23 gration Court.

1 **SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.**

2 (a) ESTABLISHMENT OF POSITION.—There shall be  
3 within the Agency the position of Chief Administrative  
4 Hearing Officer.

5 (b) DUTIES OF THE CHIEF ADMINISTRATIVE HEAR-  
6 ING OFFICER.—The Chief Administrative Hearing Officer  
7 shall hear cases brought under sections 274A, 274B, and  
8 274C of the Immigration and Nationality Act.

9 **SEC. 1306. REMOVAL OF JUDGES.**

10 Immigration judges and Members of the Board may  
11 be removed from office only for good cause, including ne-  
12 glect of duty or malfeasance, by the Director, in consulta-  
13 tion with the Chair of the Board, in the case of the re-  
14 moval of a Member of the Board, or in consultation with  
15 the Chief Immigration Judge, in the case of the removal  
16 of an immigration judge.

17 **SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated to the Agen-  
19 cy such sums as may be necessary to carry out this title.

20 **Subtitle B—Transfer of Functions**  
21 **and Savings Provisions**

22 **SEC. 1311. TRANSITION PROVISIONS.**

23 (a) TRANSFER OF FUNCTIONS.—All functions under  
24 the immigration laws of the United States (as defined in  
25 section 111(e) of the Immigration and Nationality Act, as  
26 added by section 1101(a)(2) of this Act) vested by statute

1 in, or exercised by, the Executive Office of Immigration  
2 Review of the Department of Justice (or any officer, em-  
3 ployee, or component thereof), immediately prior to the  
4 effective date of this title, are transferred to the Agency.

5 (b) TRANSFER AND ALLOCATIONS OF APPROPRIA-  
6 TIONS AND PERSONNEL.—The personnel employed in con-  
7 nection with, and the assets, liabilities, contracts, prop-  
8 erty, records, and unexpended balances of appropriations,  
9 authorizations, allocations, and other funds employed,  
10 used, held, arising from, available to, or to be made avail-  
11 able in connection with the functions transferred by this  
12 section, subject to section 1531 of title 31, United States  
13 Code, shall be transferred to the Agency. Unexpended  
14 funds transferred pursuant to this section shall be used  
15 only for the purposes for which the funds were originally  
16 authorized and appropriated.

17 (c) LEGAL DOCUMENTS.—All orders, determinations,  
18 rules, regulations, permits, grants, loans, contracts, rec-  
19 ognition of labor organizations, agreements, including col-  
20 lective bargaining agreements, certificates, licenses, and  
21 privileges—

22 (1) that have been issued, made, granted, or al-  
23 lowed to become effective by the Attorney General or  
24 the Executive Office of Immigration Review of the  
25 Department of Justice, their delegates, or any other

1 Government official, or by a court of competent ju-  
2 risdiction, in the performance of any function that is  
3 transferred under this section; and

4 (2) that are in effect on the effective date of  
5 such transfer (or become effective after such date  
6 pursuant to their terms as in effect on such effective  
7 date);

8 shall continue in effect according to their terms until  
9 modified, terminated, superseded, set aside, or revoked in  
10 accordance with law by the Agency, any other authorized  
11 official, a court of competent jurisdiction, or operation of  
12 law, except that any collective bargaining agreement shall  
13 remain in effect until the date of termination specified in  
14 the agreement.

15 (d) PROCEEDINGS.—

16 (1) PENDING.—The transfer of functions under  
17 subsection (a) shall not affect any proceeding or any  
18 application for any benefit, service, license, permit,  
19 certificate, or financial assistance pending on the ef-  
20 fective date of this title before an office whose func-  
21 tions are transferred pursuant to this section, but  
22 such proceedings and applications shall be contin-  
23 ued.

24 (2) ORDERS.—Orders shall be issued in such  
25 proceedings, appeals shall be taken therefrom, and

1        payments shall be made pursuant to such orders, as  
2        if this Act had not been enacted, and orders issued  
3        in any such proceeding shall continue in effect until  
4        modified, terminated, superseded, or revoked by a  
5        duly authorized official, by a court of competent ju-  
6        risdiction, or by operation of law.

7            (3) DISCONTINUANCE OR MODIFICATION.—  
8        Nothing in this section shall be considered to pro-  
9        hibit the discontinuance or modification of any such  
10       proceeding under the same terms and conditions and  
11       to the same extent that such proceeding could have  
12       been discontinued or modified if this section had not  
13       been enacted.

14       (e) SUITS.—This section shall not affect suits com-  
15       menced before the effective date of this title, and in all  
16       such suits, proceeding shall be had, appeals taken, and  
17       judgments rendered in the same manner and with the  
18       same effect as if this section had not been enacted.

19       (f) NONABATEMENT OF ACTIONS.—No suit, action,  
20       or other proceeding commenced by or against the Depart-  
21       ment of Justice or the Executive Office of Immigration  
22       Review, or by or against any individual in the official ca-  
23       pacity of such individual as an officer or employee in con-  
24       nection with a function transferred under this section,  
25       shall abate by reason of the enactment of this Act.

1 (g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF  
2 PARTIES.—If any Government officer in the official capac-  
3 ity of such officer is party to a suit with respect to a func-  
4 tion of the officer, and pursuant to this section such func-  
5 tion is transferred to any other officer or office, then such  
6 suit shall be continued with the other officer or the head  
7 of such other office, as applicable, substituted or added  
8 as a party.

9 (h) ADMINISTRATIVE PROCEDURE AND JUDICIAL  
10 REVIEW.—Except as otherwise provided by this title, any  
11 statutory requirements relating to notice, hearings, action  
12 upon the record, or administrative or judicial review that  
13 apply to any function transferred pursuant to any provi-  
14 sion of this section shall apply to the exercise of such func-  
15 tion by the head of the office, and other officers of the  
16 office, to which such function is transferred pursuant to  
17 such provision.

## 18 **Subtitle C—Effective Date**

### 19 **SEC. 1321. EFFECTIVE DATE.**

20 This title shall take effect one year after the effective  
21 date of division A of this Act.

**DIVISION C—FEDERAL  
WORKFORCE IMPROVEMENT  
TITLE XXI—CHIEF HUMAN  
CAPITAL OFFICERS**

**SEC. 2101. SHORT TITLE.**

This title may be cited as the “Chief Human Capital  
Officers Act of 2002”.

**SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.**

(a) IN GENERAL.—Part II of title 5, United States  
Code, is amended by inserting after chapter 13 the fol-  
lowing:

**“CHAPTER 14—AGENCY CHIEF HUMAN  
CAPITAL OFFICERS**

“Sec.

“1401. Establishment of agency Chief Human Capital Officers.

“1402. Authority and functions of agency Chief Human Capital Officers.

**“§ 1401. Establishment of agency Chief Human Cap-  
ital Officers**

“The head of each agency referred to under para-  
graphs (1) and (2) of section 901(b) of title 31 shall ap-  
point or designate a Chief Human Capital Officer, who  
shall—

“(1) advise and assist the head of the agency  
and other agency officials in carrying out the agen-  
cy’s responsibilities for selecting, developing, train-

1 ing, and managing a high-quality, productive work-  
2 force in accordance with merit system principles;

3 “(2) implement the rules and regulations of the  
4 President and the Office of Personnel Management  
5 and the laws governing the civil service within the  
6 agency; and

7 “(3) carry out such functions as the primary  
8 duty of the Chief Human Capital Officer.

9 **“§ 1402. Authority and functions of agency Chief**  
10 **Human Capital Officers**

11 “(a) The functions of each Chief Human Capital Of-  
12 ficer shall include—

13 “(1) setting the workforce development strategy  
14 of the agency;

15 “(2) assessing workforce characteristics and fu-  
16 ture needs based on the agency’s mission and stra-  
17 tegic plan;

18 “(3) aligning the agency’s human resources  
19 policies and programs with organization mission,  
20 strategic goals, and performance outcomes;

21 “(4) developing and advocating a culture of  
22 continuous learning to attract and retain employees  
23 with superior abilities;

24 “(5) identifying best practices and  
25 benchmarking studies; and



1           “(6) applying methods for measuring intellec-  
 2           tual capital and identifying links of that capital to  
 3           organizational performance and growth.

4           “(b) In addition to the authority otherwise provided  
 5 by this section, each agency Chief Human Capital  
 6 Officer—

7           “(1) shall have access to all records, reports,  
 8           audits, reviews, documents, papers, recommenda-  
 9           tions, or other material that—

10           “(A) are the property of the agency or are  
 11           available to the agency; and

12           “(B) relate to programs and operations  
 13           with respect to which that agency Chief Human  
 14           Capital Officer has responsibilities under this  
 15           chapter; and

16           “(2) may request such information or assist-  
 17           ance as may be necessary for carrying out the duties  
 18           and responsibilities provided by this chapter from  
 19           any Federal, State, or local governmental entity.”.

20           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 21 The table of chapters for part II of title 5, United States  
 22 Code, is amended by inserting after the item relating to  
 23 chapter 13 the following:

**“14. Chief Human Capital Officers ..... 1401”.**

1 **SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

2 (a) ESTABLISHMENT.—There is established a Chief  
3 Human Capital Officers Council, consisting of—

4 (1) the Director of the Office of Personnel  
5 Management, who shall act as chairperson of the  
6 Council;

7 (2) the Deputy Director for Management of the  
8 Office of Management and Budget, who shall act as  
9 vice chairperson of the Council; and

10 (3) the Chief Human Capital Officers of Execu-  
11 tive departments and any other members who are  
12 designated by the Director of the Office of Personnel  
13 Management.

14 (b) FUNCTIONS.—The Chief Human Capital Officers  
15 Council shall meet periodically to advise and coordinate  
16 the activities of the agencies of its members on such mat-  
17 ters as modernization of human resources systems, im-  
18 proved quality of human resources information, and legis-  
19 lation affecting human resources operations and organiza-  
20 tions.

21 (c) EMPLOYEE LABOR ORGANIZATIONS AT MEET-  
22 INGS.—The Chief Human Capital Officers Council shall  
23 ensure that representatives of Federal employee labor or-  
24 ganizations are present at a minimum of 1 meeting of the  
25 Council each year. Such representatives shall not be mem-  
26 bers of the Council.

1 (d) ANNUAL REPORT.—Each year the Chief Human  
2 Capital Officers Council shall submit a report to Congress  
3 on the activities of the Council.

4 **SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.**

5 Section 1103 of title 5, United States Code, is  
6 amended by adding at the end the following:

7 “(c)(1) The Office of Personnel Management shall  
8 design a set of systems, including appropriate metrics, for  
9 assessing the management of human capital by Federal  
10 agencies.

11 “(2) The systems referred to under paragraph (1)  
12 shall be defined in regulations of the Office of Personnel  
13 Management and include standards for—

14 “(A)(i) aligning human capital strategies of  
15 agencies with the missions, goals, and organizational  
16 objectives of those agencies; and

17 “(ii) integrating those strategies into the budget  
18 and strategic plans of those agencies;

19 “(B) closing skill gaps in mission critical occu-  
20 pations;

21 “(C) ensuring continuity of effective leadership  
22 through implementation of recruitment, develop-  
23 ment, and succession plans;

24 “(D) sustaining a culture that cultivates and  
25 develops a high performing workforce;

1           “(E) developing and implementing a knowledge  
2           management strategy supported by appropriate in-  
3           vestment in training and technology; and

4           “(F) holding managers and human resources  
5           officers accountable for efficient and effective human  
6           resources management in support of agency missions  
7           in accordance with merit system principles.”.

8   **SEC. 2105. EFFECTIVE DATE.**

9           This title shall take effect 180 days after the date  
10          of enactment of this division.

11   **TITLE   XXII—REFORMS   RELAT-**  
12       **ING   TO   FEDERAL   HUMAN**  
13       **CAPITAL MANAGEMENT**

14   **SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRA-**  
15               **TEGIC PLANNING IN PERFORMANCE PLANS**  
16               **AND PROGRAM PERFORMANCE REPORTS.**

17          (a) PERFORMANCE PLANS.—Section 1115 of title 31,  
18          United States Code, is amended—

19               (1) in subsection (a), by striking paragraph (3)  
20               and inserting the following:

21               “(3) provide a description of how the perform-  
22               ance goals and objectives are to be achieved, includ-  
23               ing the operational processes, training, skills and  
24               technology, and the human, capital, information, and

1 other resources and strategies required to meet  
2 those performance goals and objectives.”;

3 (2) by redesignating subsection (f) as sub-  
4 section (g); and

5 (3) by inserting after subsection (e) the fol-  
6 lowing:

7 “(f) With respect to each agency with a Chief Human  
8 Capital Officer, the Chief Human Capital Officer shall  
9 prepare that portion of the annual performance plan de-  
10 scribed under subsection (a)(3).”.

11 (b) PROGRAM PERFORMANCE REPORTS.—Section  
12 1116(d) of title 31, United States Code, is amended—

13 (1) in paragraph (4), by striking “and” after  
14 the semicolon;

15 (2) by redesignating paragraph (5) as para-  
16 graph (6); and

17 (3) by inserting after paragraph (4) the fol-  
18 lowing:

19 “(5) include a review of the performance goals  
20 and evaluation of the performance plan relative to  
21 the agency’s strategic human capital management;  
22 and”.

1   **SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING**  
2                   **PROCESS.**

3           (a) IN GENERAL.—Chapter 33 of title 5, United  
4 States Code, is amended—

5               (1) in section 3304(a)—

6                   (A) in paragraph (1), by striking “and”  
7 after the semicolon;

8                   (B) in paragraph (2), by striking the pe-  
9 riod and inserting “; and”; and

10               (C) by adding at the end the following:

11               “(3) authority for agencies to appoint, without  
12 regard to the provisions of sections 3309 through  
13 3318, candidates directly to positions for which—

14                   “(A) public notice has been given; and

15                   “(B) the Office of Personnel Management  
16 has determined that there exists a severe short-  
17 age of candidates or there is a critical hiring  
18 need.

19 The Office shall prescribe, by regulation, criteria for iden-  
20 tifying such positions and may delegate authority to make  
21 determinations under such criteria.”; and

22               (2) by inserting after section 3318 the fol-  
23 lowing:

24   **“§ 3319. Alternative ranking and selection procedures**

25               “(a)(1) the Office, in exercising its authority under  
26 section 3304; or

1       “(2) an agency to which the Office has delegated ex-  
2    mining authority under section 1104(a)(2);  
3    may establish category rating systems for evaluating ap-  
4    plicants for positions in the competitive service, under 2  
5    or more quality categories based on merit consistent with  
6    regulations prescribed by the Office of Personnel Manage-  
7    ment, rather than assigned individual numerical ratings.

8       “(b) Within each quality category established under  
9    subsection (a), preference-eligibles shall be listed ahead of  
10   individuals who are not preference eligibles. For other  
11   than scientific and professional positions at GS-9 of the  
12   General Schedule (equivalent or higher), qualified pref-  
13   erence-eligibles who have a compensable service-connected  
14   disability of 10 percent or more shall be listed in the high-  
15   est quality category.

16       “(c)(1) An appointing official may select any appli-  
17   cant in the highest quality category or, if fewer than 3  
18   candidates have been assigned to the highest quality cat-  
19   egory, in a merged category consisting of the highest and  
20   the second highest quality categories.

21       “(2) Notwithstanding paragraph (1), the appointing  
22   official may not pass over a preference-eligible in the same  
23   category from which selection is made, unless the require-  
24   ments of section 3317(b) or 3318(b), as applicable, are  
25   satisfied.

1       “(d) Each agency that establishes a category rating  
2 system under this section shall submit in each of the 3  
3 years following that establishment, a report to Congress  
4 on that system including information on—

5               “(1) the number of employees hired under that  
6 system;

7               “(2) the impact that system has had on the hir-  
8 ing of veterans and minorities, including those who  
9 are American Indian or Alaska Natives, Asian,  
10 Black or African American, and native Hawaiian or  
11 other Pacific Islander; and

12               “(3) the way in which managers were trained in  
13 the administration of that system.

14       “(e) The Office of Personnel Management may pre-  
15 scribe such regulations as it considers necessary to carry  
16 out the provisions of this section.”.

17       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
18 The table of sections for chapter 33 of title 5, United  
19 States Code, is amended by striking the item relating to  
20 section 3319 and inserting the following:

“3319. Alternative ranking and selection procedures.”.



1 **SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPAN-**  
2 **SION OF AUTHORITIES FOR USE OF VOL-**  
3 **UNTARY SEPARATION INCENTIVE PAY AND**  
4 **VOLUNTARY EARLY RETIREMENT.**

5 (a) VOLUNTARY SEPARATION INCENTIVE PAY-  
6 MENTS.—

7 (1) IN GENERAL.—

8 (A) AMENDMENT TO TITLE 5, UNITED  
9 STATES CODE.—Chapter 35 of title 5, United  
10 States Code, is amended by inserting after sub-  
11 chapter I the following:

12 “SUBCHAPTER II—VOLUNTARY SEPARATION  
13 INCENTIVE PAYMENTS  
14 “§ 3521. Definitions

15 “In this subchapter, the term—

16 “(1) ‘agency’ means an Executive agency as de-  
17 fined under section 105; and

18 “(2) ‘employee’—

19 “(A) means an employee as defined under  
20 section 2105 employed by an agency and an in-  
21 dividual employed by a county committee estab-  
22 lished under section 8(b)(5) of the Soil Con-  
23 servation and Domestic Allotment Act (16  
24 U.S.C. 590h(b)(5)) who—

25 “(i) is serving under an appointment  
26 without time limitation; and

1           “(ii) has been currently employed for  
2           a continuous period of at least 3 years;  
3           and

4           “(B) shall not include—

5           “(i) a reemployed annuitant under  
6           subchapter III of chapter 83 or 84 or an-  
7           other retirement system for employees of  
8           the Government;

9           “(ii) an employee having a disability  
10          on the basis of which such employee is or  
11          would be eligible for disability retirement  
12          under subchapter III of chapter 83 or 84  
13          or another retirement system for employees  
14          of the Government;

15          “(iii) an employee who is in receipt of  
16          a decision notice of involuntary separation  
17          for misconduct or unacceptable perform-  
18          ance;

19          “(iv) an employee who has previously  
20          received any voluntary separation incentive  
21          payment from the Federal Government  
22          under this subchapter or any other author-  
23          ity;

1 “(v) an employee covered by statutory  
2 reemployment rights who is on transfer  
3 employment with another organization; or

4 “(vi) any employee who—

5 “(I) during the 36-month period  
6 preceding the date of separation of  
7 that employee, performed service for  
8 which a student loan repayment ben-  
9 efit was or is to be paid under section  
10 5379;

11 “(II) during the 24-month period  
12 preceding the date of separation of  
13 that employee, performed service for  
14 which a recruitment or relocation  
15 bonus was or is to be paid under sec-  
16 tion 5753; or

17 “(III) during the 12-month pe-  
18 riod preceding the date of separation  
19 of that employee, performed service  
20 for which a retention bonus was or is  
21 to be paid under section 5754.

22 **“§ 3522. Agency plans; approval**

23 “(a) Before obligating any resources for voluntary  
24 separation incentive payments, the head of each agency  
25 shall submit to the Office of Personnel Management a

1 plan outlining the intended use of such incentive payments  
2 and a proposed organizational chart for the agency once  
3 such incentive payments have been completed.

4 “(b) The plan of an agency under subsection (a) shall  
5 include—

6 “(1) the specific positions and functions to be  
7 reduced or eliminated;

8 “(2) a description of which categories of em-  
9 ployees will be offered incentives;

10 “(3) the time period during which incentives  
11 may be paid;

12 “(4) the number and amounts of voluntary sep-  
13 aration incentive payments to be offered; and

14 “(5) a description of how the agency will oper-  
15 ate without the eliminated positions and functions.

16 “(c) The Director of the Office of Personnel Manage-  
17 ment shall review each agency’s plan and may make any  
18 appropriate modifications in the plan, in consultation with  
19 the Director of the Office of Management and Budget. A  
20 plan under this section may not be implemented without  
21 the approval of the Director of the Office of Personnel  
22 Management.

1   **“§ 3523. Authority to provide voluntary separation in-**  
2                   **centive payments**

3           “(a) A voluntary separation incentive payment under  
4 this subchapter may be paid to an employee only as pro-  
5 vided in the plan of an agency established under section  
6 3522.

7           “(b) A voluntary incentive payment—

8               “(1) shall be offered to agency employees on the  
9 basis of—

10               “(A) 1 or more organizational units;

11               “(B) 1 or more occupational series or lev-  
12 els;

13               “(C) 1 or more geographical locations;

14               “(D) skills, knowledge, or other factors re-  
15 lated to a position;

16               “(E) specific periods of time during which  
17 eligible employees may elect a voluntary incen-  
18 tive payment; or

19               “(F) any appropriate combination of such  
20 factors;

21               “(2) shall be paid in a lump sum after the em-  
22 ployee’s separation;

23               “(3) shall be equal to the lesser of—

24               “(A) an amount equal to the amount the  
25 employee would be entitled to receive under sec-  
26 tion 5595(c) if the employee were entitled to

1 payment under such section (without adjust-  
2 ment for any previous payment made); or

3 “(B) an amount determined by the agency  
4 head, not to exceed \$25,000;

5 “(4) may be made only in the case of an em-  
6 ployee who voluntarily separates (whether by retire-  
7 ment or resignation) under this subchapter;

8 “(5) shall not be a basis for payment, and shall  
9 not be included in the computation, of any other  
10 type of Government benefit;

11 “(6) shall not be taken into account in deter-  
12 mining the amount of any severance pay to which  
13 the employee may be entitled under section 5595,  
14 based on any other separation; and

15 “(7) shall be paid from appropriations or funds  
16 available for the payment of the basic pay of the em-  
17 ployee.

18 **“§ 3524. Effect of subsequent employment with the**

19 **Government**

20 “(a) The term ‘employment’—

21 “(1) in subsection (b) includes employment  
22 under a personal services contract (or other direct  
23 contract) with the United States Government (other  
24 than an entity in the legislative branch); and

1           “(2) in subsection (c) does not include employ-  
2           ment under such a contract.

3           “(b) An individual who has received a voluntary sepa-  
4           ration incentive payment under this subchapter and ac-  
5           cepts any employment for compensation with the Govern-  
6           ment of the United States within 5 years after the date  
7           of the separation on which the payment is based shall be  
8           required to pay, before the individual’s first day of employ-  
9           ment, the entire amount of the incentive payment to the  
10          agency that paid the incentive payment.

11          “(c)(1) If the employment under this section is with  
12          an agency, other than the General Accounting Office, the  
13          United States Postal Service, or the Postal Rate Commis-  
14          sion, the Director of the Office of Personnel Management  
15          may, at the request of the head of the agency, waive the  
16          repayment if—

17               “(A) the individual involved possesses unique  
18               abilities and is the only qualified applicant available  
19               for the position; or

20               “(B) in the case of an emergency involving a di-  
21               rect threat to life or property, the individual—

22                       “(i) has skills directly related to resolving  
23                       the emergency; and

1                   “(ii) will serve on a temporary basis only  
2                   so long as that individual’s services are made  
3                   necessary by the emergency.

4           “(2) If the employment under this section is with an  
5           entity in the legislative branch, the head of the entity or  
6           the appointing official may waive the repayment if the in-  
7           dividual involved possesses unique abilities and is the only  
8           qualified applicant available for the position.

9           “(3) If the employment under this section is with the  
10          judicial branch, the Director of the Administrative Office  
11          of the United States Courts may waive the repayment if  
12          the individual involved possesses unique abilities and is the  
13          only qualified applicant available for the position.

14   **“§ 3525. Regulations**

15          “The Office of Personnel Management may prescribe  
16          regulations to carry out this subchapter.”.

17                   (B) TECHNICAL AND CONFORMING AMEND-  
18                   MENTS.—Chapter 35 of title 5, United States  
19                   Code, is amended—

20                   (i) by striking the chapter heading  
21                   and inserting the following:



1 **“CHAPTER 35—RETENTION PREFERENCE,**  
2 **VOLUNTARY SEPARATION INCENTIVE**  
3 **PAYMENTS, RESTORATION, AND RE-**  
4 **EMPLOYMENT”**; and

5 (ii) in the table of sections by insert-  
6 ing after the item relating to section 3504  
7 the following:

“SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE  
PAYMENTS

“3521. Definitions.

“3522. Agency plans; approval.

“3523. Authority to provide voluntary separation incentive payments.

“3524. Effect of subsequent employment with the Government.

“3525. Regulations.”.

8 (2) ADMINISTRATIVE OFFICE OF THE UNITED  
9 STATES COURTS.—The Director of the Administra-  
10 tive Office of the United States Courts may, by reg-  
11 ulation, establish a program substantially similar to  
12 the program established under paragraph (1) for in-  
13 dividuals serving in the judicial branch.

14 (3) CONTINUATION OF OTHER AUTHORITY.—  
15 Any agency exercising any voluntary separation in-  
16 centive authority in effect on the effective date of  
17 this subsection may continue to offer voluntary sepa-  
18 ration incentives consistent with that authority until  
19 that authority expires.

20 (4) EFFECTIVE DATE.—This subsection shall  
21 take effect 60 days after the date of enactment of  
22 this Act.

1 (b) FEDERAL EMPLOYEE VOLUNTARY EARLY RE-  
2 TIREMENT.—

3 (1) CIVIL SERVICE RETIREMENT SYSTEM.—Sec-  
4 tion 8336(d)(2) of title 5, United States Code, is  
5 amended to read as follows:

6 “(2)(A) has been employed continuously, by the  
7 agency in which the employee is serving, for at least  
8 the 31-day period ending on the date on which such  
9 agency requests the determination referred to in  
10 subparagraph (D);

11 “(B) is serving under an appointment that is  
12 not time limited;

13 “(C) has not been duly notified that such em-  
14 ployee is to be involuntarily separated for mis-  
15 conduct or unacceptable performance;

16 “(D) is separated from the service voluntarily  
17 during a period in which, as determined by the Of-  
18 fice of Personnel Management (upon request of the  
19 agency) under regulations prescribed by the Office—

20 “(i) such agency (or, if applicable, the  
21 component in which the employee is serving) is  
22 undergoing substantial delayering, substantial  
23 reorganization, substantial reductions in force,  
24 substantial transfer of function, or other sub-  
25 stantial workforce restructuring (or shaping);

1           “(ii) a significant percentage of employees  
2           serving in such agency (or component) are like-  
3           ly to be separated or subject to an immediate  
4           reduction in the rate of basic pay (without re-  
5           gard to subchapter VI of chapter 53, or com-  
6           parable provisions); or

7           “(iii) identified as being in positions which  
8           are becoming surplus or excess to the agency’s  
9           future ability to carry out its mission effec-  
10          tively; and

11          “(E) as determined by the agency under regula-  
12          tions prescribed by the Office, is within the scope of  
13          the offer of voluntary early retirement, which may be  
14          made on the basis of—

15               “(i) 1 or more organizational units;

16               “(ii) 1 or more occupational series or lev-  
17               els;

18               “(iii) 1 or more geographical locations;

19               “(iv) specific periods;

20               “(v) skills, knowledge, or other factors re-  
21               lated to a position; or

22               “(vi) any appropriate combination of such  
23               factors;”.

24          (2) FEDERAL EMPLOYEES’ RETIREMENT SYS-  
25          TEM.—Section 8414(b)(1) of title 5, United States

1 Code, is amended by striking subparagraph (B) and  
2 inserting the following:

3 “(B)(i) has been employed continuously, by  
4 the agency in which the employee is serving, for  
5 at least the 31-day period ending on the date  
6 on which such agency requests the determina-  
7 tion referred to in clause (iv);

8 “(ii) is serving under an appointment that  
9 is not time limited;

10 “(iii) has not been duly notified that such  
11 employee is to be involuntarily separated for  
12 misconduct or unacceptable performance;

13 “(iv) is separated from the service volun-  
14 tarily during a period in which, as determined  
15 by the Office of Personnel Management (upon  
16 request of the agency) under regulations pre-  
17 scribed by the Office—

18 “(I) such agency (or, if applicable, the  
19 component in which the employee is serv-  
20 ing) is undergoing substantial delayering,  
21 substantial reorganization, substantial re-  
22 ductions in force, substantial transfer of  
23 function, or other substantial workforce re-  
24 structuring (or shaping);

1                   “(II) a significant percentage of em-  
2                   ployees serving in such agency (or compo-  
3                   nent) are likely to be separated or subject  
4                   to an immediate reduction in the rate of  
5                   basic pay (without regard to subchapter VI  
6                   of chapter 53, or comparable provisions);  
7                   or

8                   “(III) identified as being in positions  
9                   which are becoming surplus or excess to  
10                  the agency’s future ability to carry out its  
11                  mission effectively; and

12                  “(v) as determined by the agency under  
13                  regulations prescribed by the Office, is within  
14                  the scope of the offer of voluntary early retire-  
15                  ment, which may be made on the basis of—

16                         “(I) 1 or more organizational units;

17                         “(II) 1 or more occupational series or  
18                         levels;

19                         “(III) 1 or more geographical loca-  
20                         tions;

21                         “(IV) specific periods;

22                         “(V) skills, knowledge, or other fac-  
23                         tors related to a position; or

24                         “(VI) any appropriate combination of  
25                         such factors;”.

1           (3) GENERAL ACCOUNTING OFFICE AUTHOR-  
2           ITY.—The amendments made by this subsection  
3           shall not be construed to affect the authority under  
4           section 1 of Public Law 106–303 (5 U.S.C. 8336  
5           note; 114 Stat. 1063).

6           (4) TECHNICAL AND CONFORMING AMEND-  
7           MENT.—Section 7001 of the 1998 Supplemental Ap-  
8           propriations and Rescissions Act (Public Law 105–  
9           174; 112 Stat. 91) is repealed.

10          (5) REGULATIONS.—The Office of Personnel  
11          Management may prescribe regulations to carry out  
12          this subsection.

13          (c) SENSE OF CONGRESS.—It is the sense of Con-  
14          gress that the implementation of this section is intended  
15          to reshape the Federal workforce and not downsize the  
16          Federal workforce.

17   **SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.**

18          (a) IN GENERAL.—Section 7905(a)(1) of title 5,  
19          United States Code, is amended by striking “and a mem-  
20          ber of a uniformed service” and inserting “, a member  
21          of a uniformed service, and a student who provides vol-  
22          untary services under section 3111”.

23          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
24          Section 3111(c)(1) of title 5, United States Code, is  
25          amended by striking “chapter 81 of this title” and insert-

1 ing “section 7905 (relating to commuting by means other  
2 than single-occupancy motor vehicles), chapter 81”.

3 **TITLE XXIII—REFORMS RELAT-**  
4 **ING TO THE SENIOR EXECU-**  
5 **TIVE SERVICE**

6 **SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS**  
7 **OF SENIOR EXECUTIVES.**

8 (a) IN GENERAL.—Title 5, United States Code, is  
9 amended—

10 (1) in chapter 33—

11 (A) in section 3393(g) by striking  
12 “3393a,”;

13 (B) by repealing section 3393a; and

14 (C) in the table of sections by striking the  
15 item relating to section 3393a;

16 (2) in chapter 35—

17 (A) in section 3592(a)—

18 (i) in paragraph (1), by inserting “or”  
19 at the end;

20 (ii) in paragraph (2), by striking “or”  
21 at the end;

22 (iii) by striking paragraph (3); and

23 (iv) by striking the last sentence;

24 (B) in section 3593(a), by striking para-  
25 graph (2) and inserting the following:

1           “(2) the appointee left the Senior Executive  
2           Service for reasons other than misconduct, neglect of  
3           duty, malfeasance, or less than fully successful execu-  
4           tive performance as determined under subchapter  
5           II of chapter 43.”; and

6                   (C) in section 3594(b)—

7                           (i) in paragraph (1), by inserting “or”  
8                           at the end;

9                           (ii) in paragraph (2), by striking “or”  
10                          at the end; and

11                          (iii) by striking paragraph (3);

12                   (3) in section 7701(c)(1)(A), by striking “or re-  
13                   moval from the Senior Executive Service for failure  
14                   to be recertified under section 3393a”;

15                   (4) in chapter 83—

16                           (A) in section 8336(h)(1), by striking “for  
17                           failure to be recertified as a senior executive  
18                           under section 3393a or”; and

19                           (B) in section 8339(h), in the first sen-  
20                           tence, by striking “, except that such reduction  
21                           shall not apply in the case of an employee retir-  
22                           ing under section 8336(h) for failure to be re-  
23                           certified as a senior executive”; and

24                   (5) in chapter 84—



1 (A) in section 8414(a)(1), by striking “for  
2 failure to be recertified as a senior executive  
3 under section 3393a or”; and

4 (B) in section 8421(a)(2), by striking “,  
5 except that an individual entitled to an annuity  
6 under section 8414(a) for failure to be recer-  
7 tified as a senior executive shall be entitled to  
8 an annuity supplement without regard to such  
9 applicable minimum retirement age”.

10 (b) SAVINGS PROVISION.—Notwithstanding the  
11 amendments made by subsection (a)(2)(A), an appeal  
12 under the final sentence of section 3592(a) of title 5,  
13 United States Code, that is pending on the day before the  
14 effective date of this section—

15 (1) shall not abate by reason of the enactment  
16 of the amendments made by subsection (a)(2)(A);  
17 and

18 (2) shall continue as if such amendments had  
19 not been enacted.

20 (c) APPLICATION.—The amendment made by sub-  
21 section (a)(2)(B) shall not apply with respect to an indi-  
22 vidual who, before the effective date of this section, leaves  
23 the Senior Executive Service for failure to be recertified  
24 as a senior executive under section 3393a of title 5, United  
25 States Code.

1 **SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL AN-**  
2 **NUAL COMPENSATION.**

3 Section 5307(a) of title 5, United States Code, is  
4 amended by adding at the end the following:

5 “(3) Notwithstanding paragraph (1), the total pay-  
6 ment referred to under such paragraph with respect to an  
7 employee paid under section 5372, 5376, or 5383 of title  
8 5 or section 332(f), 603, or 604 of title 28 shall not exceed  
9 the total annual compensation payable to the Vice Presi-  
10 dent under section 104 of title 3. Regulations prescribed  
11 under subsection (c) may extend the application of this  
12 paragraph to other equivalent categories of employees.”.

13 **TITLE XXIV—ACADEMIC**  
14 **TRAINING**

15 **SEC. 2401. ACADEMIC TRAINING.**

16 (a) ACADEMIC DEGREE TRAINING.—Section 4107 of  
17 title 5, United States Code, is amended to read as follows:

18 **“§ 4107. Academic degree training**

19 “(a) Subject to subsection (b), an agency may select  
20 and assign an employee to academic degree training and  
21 may pay or reimburse the costs of academic degree train-  
22 ing from appropriated or other available funds if such  
23 training—

24 “(1) contributes significantly to—

25 “(A) meeting an identified agency training  
26 need;

1                   “(B) resolving an identified agency staffing  
2                   problem; or

3                   “(C) accomplishing goals in the strategic  
4                   plan of the agency;

5                   “(2) is part of a planned, systematic, and co-  
6                   ordinated agency employee development program  
7                   linked to accomplishing the strategic goals of the  
8                   agency; and

9                   “(3) is accredited and is provided by a college  
10                  or university that is accredited by a nationally recog-  
11                  nized body.

12                  “(b) In exercising authority under subsection (a), an  
13                  agency shall—

14                  “(1) consistent with the merit system principles  
15                  set forth in paragraphs (2) and (7) of section  
16                  2301(b), take into consideration the need to—

17                  “(A) maintain a balanced workforce in  
18                  which women, members of racial and ethnic mi-  
19                  nority groups, and persons with disabilities are  
20                  appropriately represented in Government serv-  
21                  ice; and

22                  “(B) provide employees effective education  
23                  and training to improve organizational and indi-  
24                  vidual performance;

1 “(2) assure that the training is not for the sole  
2 purpose of providing an employee an opportunity to  
3 obtain an academic degree or to qualify for appoint-  
4 ment to a particular position for which the academic  
5 degree is a basic requirement;

6 “(3) assure that no authority under this sub-  
7 section is exercised on behalf of any employee occu-  
8 pying or seeking to qualify for—

9 “(A) a noncareer appointment in the Sen-  
10 ior Executive Service; or

11 “(B) appointment to any position that is  
12 excepted from the competitive service because of  
13 its confidential policy-determining, policy-  
14 making, or policy-advocating character; and

15 “(4) to the greatest extent practicable, facilitate  
16 the use of online degree training.”.

17 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
18 The table of sections for chapter 41 of title 5, United  
19 States Code, is amended by striking the item relating to  
20 section 4107 and inserting the following:

“4107. Academic degree training.”.

21 **SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDU-**  
22 **CATION PROGRAM.**

23 (a) FINDINGS AND POLICIES.—

24 (1) FINDINGS.—Congress finds that—

1 (A) the United States Government actively  
2 encourages and financially supports the train-  
3 ing, education, and development of many  
4 United States citizens;

5 (B) as a condition of some of those sup-  
6 ports, many of those citizens have an obligation  
7 to seek either compensated or uncompensated  
8 employment in the Federal sector; and

9 (C) it is in the United States national in-  
10 terest to maximize the return to the Nation of  
11 funds invested in the development of such citi-  
12 zens by seeking to employ them in the Federal  
13 sector.

14 (2) POLICY.—It shall be the policy of the  
15 United States Government to—

16 (A) establish procedures for ensuring that  
17 United States citizens who have incurred serv-  
18 ice obligations as the result of receiving finan-  
19 cial support for education and training from the  
20 United States Government and have applied for  
21 Federal positions are considered in all recruit-  
22 ment and hiring initiatives of Federal depart-  
23 ments, bureaus, agencies, and offices; and

24 (B) advertise and open all Federal posi-  
25 tions to United States citizens who have in-

1           curred service obligations with the United  
2           States Government as the result of receiving fi-  
3           nancial support for education and training from  
4           the United States Government.

5           (b) FULFILLMENT OF SERVICE REQUIREMENT IF  
6           NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—  
7           Section 802(b)(2) of the David L. Boren National Secu-  
8           rity Education Act of 1991 (50 U.S.C. 1902) is  
9           amended—

10           (1) in subparagraph (A), by striking clause (ii)  
11           and inserting the following:

12                   “(ii) if the recipient demonstrates to  
13                   the Secretary (in accordance with such  
14                   regulations) that no national security posi-  
15                   tion in an agency or office of the Federal  
16                   Government having national security re-  
17                   sponsibilities is available, work in other of-  
18                   fices or agencies of the Federal Govern-  
19                   ment or in the field of higher education in  
20                   a discipline relating to the foreign country,  
21                   foreign language, area study, or inter-  
22                   national field of study for which the schol-  
23                   arship was awarded, for a period specified  
24                   by the Secretary, which period shall be de-

1 terminated in accordance with clause (i); or”;

2 and

3 (2) in subparagraph (B), by striking clause (ii)

4 and inserting the following:

5 “(ii) if the recipient demonstrates to  
6 the Secretary (in accordance with such  
7 regulations) that no national security posi-  
8 tion is available upon the completion of the  
9 degree, work in other offices or agencies of  
10 the Federal Government or in the field of  
11 higher education in a discipline relating to  
12 the foreign country, foreign language, area  
13 study, or international field of study for  
14 which the fellowship was awarded, for a  
15 period specified by the Secretary, which pe-  
16 riod shall be established in accordance with  
17 clause (i); and”.

18 **SEC. 2403. COMPENSATORY TIME OFF FOR TRAVEL.**

19 Subchapter V of chapter 55 of title 5, United  
20 States Code, is amended by adding at end the fol-  
21 lowing:

22 **“§ 5550b. Compensatory time off for travel**

23 “(a) An employee shall receive 1 hour of compen-  
24 satory time off for each hour spent by the employee in  
25 travel status away from the official duty station of the

1 employee, to the extent that the time spent in travel status  
2 is not otherwise compensable.

3 “(b) Not later than 30 days after the date of enact-  
4 ment of this section, the Office of Personnel Management  
5 shall prescribe regulations to implement this section.”.

Amend the title so as to read: “A bill to establish  
the Department of Homeland Security and the National  
Office for Combating Terrorism, and for other pur-  
poses.”.